

STAFF PRELIMINARY DRAFT
SUBJECT TO REVISION

PROPOSED LOCAL GOVERNMENT CODE
Title 47A, R.C.M., 1947

JUL 26 77

STATE DOCUMENTS

AFTER COMMISSION REVIEW, THE DRAFT WILL
BE PRINTED APRIL 30, 1976 FOR GENERAL
DISTRIBUTION TO CITIZENS AND LOCAL
GOVERNMENT OFFICIALS

PUBLIC HEARINGS WILL BE HELD DURING
MAY, JUNE, AND JULY

THE COMMISSION WILL REVISE AND
TENTATIVELY ADOPT THE CODE IN AUGUST

COPIES WILL BE DISTRIBUTED TO
CITIZENS AND LOCAL OFFICIALS

PUBLIC HEARINGS WILL BE HELD IN
SEPTEMBER AND THE COMMISSION WILL ADOPT
THE CODE IN THE VERSION TO BE PRESENTED
TO THE LEGISLATURE

Staff Report

To The

Commission on Local Government

Staff Report No. 9

January 22, 1976



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To The
Commission on Local Government

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COMMISSION ON LOCAL GOVERNMENT

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Director

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Deputy Director

January 22, 1976

MEMBERS OF THE STATE COMMISSION ON LOCAL GOVERNMENT

Gentlemen:

State and local officials have long realized that local governments need more freedom if they are to meet the needs of their citizens. The new Montana Constitution now provides for such freedom, but its provisions must be carefully implemented. This staff draft of the new local government code is intended to replace the present tangle of confusing, conflicting, and unnecessarily complex local government laws with a new set of laws that will give local governments the authority to deal effectively with their problems.

The new Montana Constitution and a new code of local government laws will permit local governments to be partners--not step-children--of the state.

It is the state's responsibility--specifically the legislature's responsibility--to adopt new laws to implement the local government article of the new constitution and permit effective local government.

The 1974 legislature created the State Commission on Local Government to study and recommend necessary and desirable changes to the 1975 and 1977 legislative sessions. The act creating the Commission provides:

The Commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The Commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

The staff of the State Commission on Local Government respectfully submits to the Commission this preliminary staff draft of the new local government code.



COMMISSION ON LOCAL GOVERNMENT MEMBERS

January 22, 1976

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I deeply appreciate the contributions of staff members involved in the drafting, typing, and proofing that was necessary to produce this staff draft of the Code. Every member of the staff contributed to this effort. Special credit is deserved by Mike W. Sehestedt, Chief Attorney, Clyde Peterson, Attorney, and Steve Turkiewicz, Finance Project Coordinator, for their careful drafting of the new code. The process of drafting, correcting, and revising preliminary drafts was facilitated by the expert typing of Merrylee Zins, Secretary, and Josephine Lahti and Joyce Moore, Typists. Editing by Susan Cole, Administrative Assistant, and Arnold Malina, Public Information Officer, greatly improved the style, grammar, and consistency of the code.

The State Commission Staff is grateful for the response of local government officials and employees to our inquiries regarding problems created by existing state law and their suggestions for improvements. The review and comments on earlier staff drafts by local officials have been especially helpful. We especially appreciate the thoughtful and useful reviews by Dean Zinnecker, Executive Director of the Montana Association of Counties; Dan Mizner, Executive Director of the Montana League of Cities and Towns; George H. Pendergast, Administrator of the Local Government Services Division of the Department of Community Affairs; Chuck Painter, Missoula County Director of Administrative Services; and members of their staffs.

The Staff is looking forward to working with the Commission, citizens, and state and local officials to improve and refine the proposed code during the next twelve months.

DALE A. HARRIS
STAFF DIRECTOR

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PREFACE

The staff is pleased to submit to the Commission this preliminary staff draft of the proposed new local government code. The statutory mandate of the State Commission with regard to the new local government code is set out in section 16-5117 (1). This section states:

The Commission shall make a detailed and thorough study of local government structure, powers, services, finance, and state-local relations. The commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

This section clearly authorizes the State Commission on Local Government to go beyond a mere recodification of existing local government laws and to make substantive revisions in local government laws where study shows such changes are needed.

The authorization to propose changes in local government laws makes a clear statement of principles of paramount importance. The staff drafting effort on the new code was guided by the general principles approved by the Commission when it adopted Staff Report No. 2, "Proposed Outline for A Code of Local Government Laws," on May 31, 1974. These principles include the use of uniform terminology, a simplification of language, the integration of all provisions dealing with local government into a consistent interrelated whole, the elimination of conflict, and the consolidation into single sections of similar provisions in existing law. All drafting decisions were guided by the often avowed Commission goal of increased flexibility and accountability of local government.

The framework of the code within which these principles have been applied was established by 1975 legislative approval of Commission proposed House Bill 178. HB 178 provided for a single unified code of laws for both municipalities and counties consisting of nine parts to be included in a new Title 47A of the Revised Codes of Montana. The Introduction which follows summarizes the contents of the following nine parts of the code:

- Part 1. GENERAL PROVISIONS AND DEFINITIONS.
- Part 2. LOCAL GOVERNMENT FORMATION.
- Part 3. LOCAL GOVERNMENT STRUCTURE, ORGANIZATION, AND OPERATION.
- Part 4. ADMINISTRATIVE PROVISIONS.
- Part 5. POWERS OF GENERAL POWER LOCAL GOVERNMENTS.
- Part 6. SERVICES OF GENERAL POWER LOCAL GOVERNMENTS.
- Part 7. POWERS AND LIMITATIONS OF SELF-GOVERNMENT LOCAL GOVERNMENTS.
- Part 8. DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE.
- Part 9. LOCAL GOVERNMENT FINANCES.

This draft is complete except for seven chapters of part 6, Services, that will provide for and regulate the delivery of services by general powers local governments.

Studies currently being undertaken by the State Commission staff will result in expansion and refinement of part 6, Services. Specifically, as the service studies are completed, appropriate chapters will be added to part 6, Services, setting out either a specific mechanism or standards for the delivery of a particular service. A list of the seven anticipated chapters can be found in part 6 of the code and the attached Schedule of Proposed Laws.

As the chapters are added, the general authorization to provide the service contained in chapter 1 of part 6 will have the qualifying phrase "as provided in part 6, chapter____" added where appropriate. Similarly, as service studies are completed, it will be possible to more clearly identify duties which local governments perform for the state and to use such identification to refine part 8, Duties of Local Governments as Agents of the State.

It is also anticipated that part 9, Local Government Finance, will undergo some additional development. A series of sections codifying existing state aid programs will be added to chapter 4 on Sources of Revenue for Local Governments. Review by local government financial administrators is also expected to significantly improve this part. Some development is also anticipated as a result of cooperation with the uniform budgeting and accounting project being undertaken by the Department of Community Affairs. That project directed by George Pendergast has as its goal the development of modern budgeting, accounting, and reporting systems for local governments. Every effort will be made to assure consistency between the budgeting, accounting, and reporting system and the revised code proposed by the State Commission staff.

Not included in the draft are a number of areas which existing law codifies in either Title 11, Cities and Towns, or Title 16, Counties. These areas will, under the recodification plan developed by Code Commissioner Diana S. Dowling, be included as a part or chapter in other titles of the recodified Montana Code Annotated. These areas include Police and Municipal Courts (Title 11, chapters 16 and 17) and Clerk of the District Court, and Constable and Justices of the Peace (Title 16, chapters 30 and 36), which will be transferred to the new code title on Courts and Judiciary; police and fire pension and retirement rights (parts of Title 11, chapters 18 and 19), which will be transferred to the new code title on Land Resources and Use. It should be stressed that this allocation is tentative. Further information on the general recodification being undertaken by the Code Commission may be obtained directly from that office. It should also be noted that inclusion of a subject in another title does not preclude revision by the State Commission on Local Government if study shows that changes are needed. The attached schedule indicates the additional laws being drafted by the Commission staff which will not be included in the local government code.

Disposition charts comparing Title 47A with Title 11 and 16 are available from the State Commission on Local Government office. Section comments, source notes, and other explanatory material is being prepared and will be available on request from the Commission.

A suggested Schedule for Review of Staff Proposals by the Commission on Local Government and a suggested Schedule for Presentation of the Local Government Code follow this preface. The staff will recommend adoption of the schedules by the Commission at the January 22 and 23 meetings.

The working schedules, if approved by the Commission, will provide ample opportunity for review and comment on the proposed code by interested citizens and officials prior to the approval and referral by the Commission of the proposed code to the 1977 legislature. If code reviewers at any time have questions, reactions, or thoughts with regard to the proposed code, or any other aspect of local government, please feel free to contact any member of the State Commission staff. We would greatly appreciate written comments and suggestions regarding the code.

SCHEDULE FOR REVIEW OF STAFF PROPOSALS
BY THE COMMISSION ON LOCAL GOVERNMENT

Subject to Approval by Commission

- I. The Local Government Code, except for chapters regulating individual service areas, will be reviewed at the January, February, and March commission meetings.
- II. Although the draft code authorizes each of the following services, it does not yet contain laws specifically regulating each of the following services. Based on staff study of each service area, the staff will submit proposed chapters on each service to the commission prior to May 30. These chapters will be included in part 6 of the local government code.

OUTLINE PART 6, CHAPTERS 2-7

CHAPTER 2. AGRICULTURAL SERVICES

- Extension Activities
- Fairs
- Pest Control
- Weed Control

CHAPTER 5. EMERGENCY SERVICES

- Civil Preparedness
- Fire Protection
- Law Enforcement

CHAPTER 3. COMMUNITY DEVELOPMENT

- Housing
- Industrial Development
- Urban Renewal

CHAPTER 6. HUMAN SERVICES

- Economic Assistance
- Public Health
- Social Services

CHAPTER 4. COMMUNITY SERVICES

- Cultural Affairs
- Libraries
- Museums
- Recreation

CHAPTER 7. TRANSPORTATION

- Airports
- Public Transit
- Roads and Streets

CHAPTER 8. WATER AND WASTE SERVICES

- Sewer
- Solid Waste
- Water

- III. Based on the service studies, the staff will present to the commission by May 30th separate laws on the following subjects. These proposed laws will not be part of the local government code. They will be codified elsewhere in the Revised Codes of Montana:

Planning and Zoning
Corrections

Courts: Justice of the Peace, Police, Municipal,
and Small Claims

- IV. A report suggesting minor amendments to conform the following laws to the local government code will be presented to the commission by May 30th. The laws creating the following entities will not be revised except for minor changes to conform the laws to the local government code. Each unit will have the status of an independent unit of local government.

Airport Authorities
Conservancy Districts
Drainage Districts
Irrigation Districts
Soil and Water Conservation Districts
Housing Authorities
Hospital Districts
County Water and Sewer

The laws creating the following entities will not be revised except for minor changes to conform the laws to the local government code and to make them clearly subordinate to the general purpose local government.

Cemeteries
Mosquito Districts
Refuse Disposal Districts
Urban Transportation Districts

- V. A proposal for reform of local government finance will be presented to the commission in April.
- VI. A major proposal regarding the counties' responsibilities for administering and financing district courts will be presented to the commission in May.
- VII. A major proposal regarding the counties' responsibilities for administration and financing of economic assistance programs will be presented to the commission in June.
- VIII. A proposal regarding counties' responsibility for public health will be presented to the commission in July.
- IX. A report on state-local relations including the role of the Department of Community Affairs will be presented to the commission in July.

SCHEDULE FOR PRESENTATION OF THE LOCAL GOVERNMENT CODE

Subject to Approval by Commission

1976	January 22-23rd	COMMISSION MEETING - Initial Presentation of Code
	February 1st to March 19th	Staff Meetings with: City and County Attorneys; City and County Clerks; MACo and MLC&T Executive and Legislative Committees; Executive Committee MAECO; House and Senate Local Government Committees; Study Commissions; Governor's Local Government Advisory Council; DCA Staff.
	February 20-21st	Further Consideration of Code by Commission
	March 19th	Further Consideration of Code by Commission
	March 19-30th	Staff Integrate Commission Proposals and Suggestions from Meetings
	April 30th	Reproduction and General Distribution of Code - 1,000 Copies (list to be determined)
	May 1st to July 1st	Staff Public Hearings Across State (4-7), Other Meetings and Presentations
	July 23rd	Commission Adopt Amendments to Code
	July 23rd to August 20th	Integrate Commission Approved Amendments
	August 20th	Commission Meeting - Tentative Approval of Code
	September	Formal Commission Hearings Across State (4-7)
	September 24th	Commission Meeting - Consider Additional Comments, Adopt Amendments and with Changes Approve Code
	October	Printing and Distribution of Code as Approved (1,000 copies)
	December 1st	Report with Code to Legislature

SUMMARY OF LOCAL GOVERNMENT CODE

TITLE 47A

PART 1. GENERAL PROVISIONS AND DEFINITIONS

Chapter 1. General Provisions

This chapter has no precise counterpart in existing law. Under existing law, similar provisions are scattered throughout Titles 11 and 16 with each provision applicable to only a part of the code. By grouping them in one place, repetition is eliminated.

Chapter 2. Definitions and Construction

While small groups of definitions and various sections establishing a rule or rules of construction can be found in many, if not most, of the chapters of Titles 11 and 16, Chapter 2 represents a significant departure in that for the first time definitions are grouped together and made applicable to the whole code rather than just a chapter or part of a chapter. This grouping will make it easier to determine what a particular section means and will help to unify the code by giving a common meaning to the terms used. It should be noted that this kind of grouping is characteristic of much modern legislation, for example, the Uniform Commercial Code (Title 87A) and the new Montana Criminal Code (Title 94).

PART 2. LOCAL GOVERNMENT FORMATION

Chapter 1. Incorporation and Disincorporation of Municipalities

Chapter 1 represents basically a recodification of existing Title 11, Chapters 2 and 3. For both incorporation and disincorporation, language used in existing law has been modernized and consolidated. The most significant substantive changes are a stiffening of petition requirements for incorporation and a provision allowing state aid to a service district serving a disincorporated municipality.

Chapter 2. Annexation

While Chapter 2 essentially restates the currently authorized methods of annexation, there are significant changes. These include elimination of the fire district exclusion contained in section 11-519(2)(d) and an authorization to annex without consent wholly surrounded areas used for industrial or manufacturing

purposes. The chapter also makes it clear that each method is separate and distinct rather than cumulative.

Chapter 3. County Boundaries and County Seats

Chapter 3 provides a simple, clear method by which citizens or county governing bodies can propose either the merger of counties, an alteration of county boundaries, or a change in the location of a county seat. As required by the constitution, a majority vote is required in each affected county.

Chapter 4. Consolidation, Confederation and Merger

Basically descriptive, this chapter describes the methods by which consolidation, confederation, and merger can be achieved and describes the resultant entity.

PART 3. LOCAL GOVERNMENT STRUCTURE, ORGANIZATION AND OPERATION

Chapter 1. Review, Amendment and Adoption of Local Government Form

This chapter recodifies the existing Voter Review law. The constitutional requirement of review at 10 year intervals is met by directing the submission to the voters of the question of establishing a study commission every 10 years. It also provides for submission to the voters of either amendments to an existing form or a new form of government by either petition or resolution of the governing body.

Chapter 2. Alternative Forms

This chapter was proposed by the State Commission and adopted by the legislature during the 1975 session.

Chapter 3. Legislative Organization and Procedure

This chapter set certain minimum standards for the exercise of local legislative powers. In effect it assures a minimum of legislative "due process." A local government may, under this chapter, adopt additional rules governing its legislative procedures.

Chapter 4. Departments, Boards, Subordinate Service Areas and Limited Purpose Local Governments

A key chapter in the new code, Chapter 4 sets out the structures through which a local government can act. Included are the authorization to establish departments and boards, both advisory and administrative. An important part of this chapter is a section which, for the

first time in Montana, clearly distinguishes between those districts created by a local government or by state law which are subordinate to the local government and those districts which are independent of the local government. Also included is the manner in which subordinate districts relate to the general government.

Chapter 5. Provisions Common to All Forms of Local Government

This chapter sets out standard provisions for such commonly used procedures as notice, petition, public hearings, and protests. By setting these items out in a single chapter applicable to the entire code, it is possible to eliminate the current practice of setting these provisions out in detail in each section where they are used. Standard provisions will avoid or reduce the confusion inherent in half a dozen different notice requirements. This chapter also includes provisions drawn from existing law on the filling of vacancies and continuity of government in emergencies.

Chapter 6. Election

This chapter contains the special provisions needed for local government elections, standardized election procedures, and makes the provisions of Title 23 clearly applicable to local elections.

PART 4. ADMINISTRATIVE PROVISIONS

Chapter 1. Wages and Benefits

Chapter 1 is essentially a recodification of the existing laws governing wages and benefits of local government employees. Included are such items as vacation and sick leave, holidays, and the authorization for participation in pension systems and health insurance plans.

Chapter 2. Personnel System

This chapter authorizes but does not require a civil service commission, except for law enforcement hiring in local governments with a population of more than 5,000. Other provisions include a prohibition of nepotism, authorization of the "4/40" work week, and related provisions.

Chapter 3. Official Bonds

This chapter combines and recodifies the existing law on official bonds. There is no change in substance.

Chapter 4. Code of Ethics

This chapter meets, for local governments, the constitutional requirement that a code of ethics be established for public officers and employees.

Chapter 5. Public Meetings and Records

This chapter also implements constitutional provisions by providing for open public meetings and public access to public records. Based largely on existing law, this chapter also provides for protection of privacy and for the destruction of old records.

PART 5. POWERS OF GENERAL POWER LOCAL GOVERNMENTS

Chapter 1. Corporate Powers

This chapter is a departure from existing law. While no powers not currently given to either cities or counties are granted to local governments by this chapter, for the first time these scattered grants of power are drawn together into a single chapter. The powers included in this chapter include such "corporate" powers as the power to pay expenses, buy and sell property, and to contract.

Chapter 2. Governmental Powers

Similar to Chapter 1, Chapter 2 groups in one place such governmental powers as the power to enact ordinances and to levy taxes. It is a departure from current law in that counties as well as municipalities are given the legislative powers authorized by the 1972 constitution. It also includes the interlocal agreement provision contained in current law.

PART 6. SERVICES

Chapter 1. General Service Authorization

This chapter lists all services which a local government may provide. Also set out are local regulatory powers. The remainder of the chapter enumerates the methods by which services may be provided and details the manner in which service and capital improvement districts may be created. The most significant feature of this chapter is the fact that it establishes a single method for creating a district to provide a service or build an improvement replacing the current multiplicity of methods, each of which could be used only for a single purpose.

Chapters 2 to 8

These chapters, which will deal with Agricultural Services, Community Development, Community Services, Emergency Services, Human Services, Transportation, and Water and Waste Services, are being drafted by the State Commission staff. When completed, they will establish specific standards and mechanisms regarding those services listed.

PART 7. POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS

This part was proposed by the State Commission and adopted by the legislature at its last session. Amendments are proposed to the last section to conform the bill with Title 47A.

PART 8. DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

Chapter 1. General Provisions

Chapter 1 establishes the purpose of part 8 and assigns general responsibility for providing the services.

Chapter 2. Records

This chapter continues the duty currently imposed on counties to keep certain records and indexes.

Chapter 3. Public Health

Chapter 3 continues the existing health duties of counties and continues the general supervisory control of the State Board of Health, but eliminates the requirement for health boards.

Chapter 4. Law Enforcement

This chapter continues the current county duties of enforcing laws, prosecuting violators of state law, and maintaining a jail meeting certain standards.

Chapter 5. Judicial

This chapter continues the county's duty to provide for at least one justice of the peace and to provide him with materials and facilities. Also continued are the county's duties to the district court. These duties include providing a clerk of court and adequate facilities for the court.

Chapter 6. Administrative

This chapter imposes a number of duties on counties; included are the duty to collect state, school and municipal taxes, the duty to conduct state elections, the duty to control noxious weeds, the duty to provide for a public administrator, and the duty to establish a tax appeals board.

PART 9. LOCAL GOVERNMENT FINANCES

Chapter 1. General Provisions

This chapter sets forth the general responsibility of the local government in the administration of local monies. Along with the local government's responsibilities, the basic role of the state in local government finance is established. This role includes the basic constitutional supervision that is required of the state and the provision of technical assistance to the local governments. Definitions that apply throughout Part 9 are included in Chapter 1.

Chapter 2. Budget and Appropriation

This chapter contains three basic differences from the present budgeting system; the most important is the change of the fiscal year from July-June to an October-September cycle. Second, the preparation of a budget is assigned to a specific individual or individuals not serving on the governing body. The third change provides for the transition from the traditional budgets to program performance budgets.

Chapter 3. Local Government Finance Administration

This chapter brings together all those sections of present law scattered throughout the codes that identify the responsibilities and duties for the day-to-day administration of local government finances. Also, the chapter provides the governing body the authority to identify one department or office as responsible for finance administration or allocate the duties between departments and offices.

Chapter 4. Sources of Revenue for Local Governments With General Government Powers

Chapter 4 provides general power local government the authority to raise revenue to finance services and facilities. Both counties and municipalities are granted an all-purpose mill levy to replace the existing multiple levies, and all local governments are authorized several new local option taxes. These options include an income tax, levied only after an affirmative vote of the people, motel or hotel tax, fuels tax, franchise tax, and a tax on the purchase of certain utility services.

Chapter 5. Debt Management

This chapter consolidates all the laws regulating local government debt into three basic categories--general obligation, revenue and local improvement district bonds--and provides common procedures for the issuance of each type of bond. The existing statutory debt

limits are continued and municipalities as well as counties authorized to incur debts up to \$40,000 without a prior vote of the electorate. Counties are given the same authority as municipalities to issue revenue bonds.

PROPOSED LOCAL GOVERNMENT CODE

TITLE 47A, R.C.M., 1947

OUTLINE OF LOCAL GOVERNMENT CODE

TITLE 47A

PART 1. GENERAL PROVISIONS AND DEFINITIONS

- Chapter 1. General Provisions
- Chapter 2. Definitions and Construction

PART 2. LOCAL GOVERNMENT FORMATION

- Chapter 1. Incorporation and Disincorporation of Municipalities
- Chapter 2. Annexation
- Chapter 3. County Boundaries and County Seats
- Chapter 4. Consolidation, Confederation and Merger

PART 3. LOCAL GOVERNMENT STRUCTURE, ORGANIZATION AND OPERATION

- Chapter 1. Review, Amendment and Adoption of Local Government Form
- Chapter 2. Alternative Forms of Local Government
- Chapter 3. Legislative Organization and Procedures
- Chapter 4. Departments, Boards, Subordinate Service Areas, and Limited Purpose Local Governments
- Chapter 5. Provisions Common to All Forms of Local Government
- Chapter 6. Elections

PART 4. ADMINISTRATIVE PROVISIONS

- Chapter 1. Wages and Benefits
- Chapter 2. Personnel System
- Chapter 3. Official Bonds
- Chapter 4. Code of Ethics
- Chapter 5. Public Meetings and Records

PART 5. POWERS OF GENERAL POWER LOCAL GOVERNMENTS

- Chapter 1. General Government Corporate Powers
- Chapter 2. General Government Governmental Powers

PART 6. SERVICES OF GENERAL POWER LOCAL GOVERNMENTS

- Chapter 1. General Service Authorization
- Chapter 2. Agricultural Service
- Chapter 3. Community Development
- Chapter 4. Community Services
- Chapter 5. Emergency Services
- Chapter 6. Human Services
- Chapter 7. Transportation
- Chapter 8. Water and Waste Services

PART 7. POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS

- Chapter 1. Powers of Self-Government Local Governments
- Chapter 2. Limitations on Self-Government Local Governments

PART 8. DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

- Chapter 1. General Provisions
- Chapter 2. Records
- Chapter 3. Public Health
- Chapter 4. Law Enforcement
- Chapter 5. Judicial
- Chapter 6. Administrative

PART 9. LOCAL GOVERNMENT FINANCES

- Chapter 1. General Provisions
- Chapter 2. Budget and Appropriation
- Chapter 3. Local Government Financial Administration
- Chapter 4. Source of Revenue for Local Governments
with General Government Powers
- Chapter 5. Debt Management

PART 1

GENERAL PROVISIONS AND DEFINITIONS

PART 2

LOCAL GOVERNMENT FORMATION

PART 1, CHAPTER 1

GENERAL PROVISIONS

SECTION 47A-1-101. TITLE. This title shall be known and may be cited as the "Local Government Code".

SECTION 47A-1-102. GENERAL PURPOSE OF TITLE. It is the purpose of this title: (1) To fully implement Article XI of the Montana constitution of 1972.

(2) To provide the residents of this state with responsive and responsible local governments the form, structure and activities of which are determined by the citizens and officials of the local government.

SECTION 47A-1-103. LIBERAL CONSTRUCTION. (1) The provisions of this title shall be liberally construed to effect its purpose.

(2) The rule of law that the powers of a local government unit shall be strictly construed has no application to the provisions of this title. Any reasonable doubt as to the existence of a power or authority granted by this title to local government shall be resolved in favor of the power or authority's existence.

SECTION 47A-1-104. POWERS VESTED IN GOVERNING BODY. Unless the context requires otherwise, all powers granted to local governments by this title shall be vested in the governing body of the local government.

SECTION 47A-1-105. PRIOR RIGHTS AND OBLIGATIONS. This title shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued prior to May 2, 1977.

SECTION 47A-1-106. TITLE CONTROLS. In the event that any provision of this title is found to be in conflict with the provisions of any other law, this title shall control.

SECTION 47A-1-107. TITLE TO BE CONSTRUED AS A WHOLE. This title and amendments hereto are to be construed as a whole.

SECTION 47A-1-108. SEVERABILITY. If any part of this title is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this title is invalid in one or more applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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SECTION 47A-1-109. STATE TECHNICAL ASSISTANCE. All state agencies are authorized and encouraged to provide technical assistance to local governments. The department of community affairs shall coordinate technical assistance provided to local governments.

SECTION 47A-1-110. PENALTY. (1) The failure of an officer or employee to perform a duty imposed by this code is official misconduct as defined in section 94-7-401 and may be punished as such.

(2) Where a local government is required to provide information to a state agency and fails to provide the required information, the department of community affairs may issue an order stopping payment of any state financial aid to the local government. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the local government.

DRAFT

PART 1, CHAPTER 2

DEFINITIONS AND CONSTRUCTION

SECTION 47A-1-201. GENERAL DEFINITIONS. In this title, unless otherwise provided or the context otherwise requires:

(1) "Local government" means either a municipality or a county.

(2) "Municipality" means an entity which is incorporated as provided by part 2 of chapter 1 of this title or which is incorporated under the provisions of any prior law as a city or town.

(3) "County" means an entity recognized as such by Article XI, section 1 of the Montana constitution.

(4) "Governing body" means the commission or town meeting in an alternative form of local government, or the legislative body established by a charter.

(5) "Officer" means a person holding a position with a local government which is ordinarily filled by election and in those units of local government with a manager, the manager.

(6) "Employee" means a person other than an officer who is employed by a local government.

(7) "Merger" means the joinder into a single unit of two or more like units of local government. If two counties merge the resultant entity is a single county. If two municipalities merge the resultant entity is a municipality.

(8) "Consolidation" means the joinder of one or more municipalities with one or more counties to form a single unit of local government which is both a municipality and a county for all purposes.

(9) "Chief executive" or "administrative officer" means the elected executive in governments adopting the commission executive form, the manager in governments adopting the commission manager form, the chairman in governments adopting the commission chairman form, the town chairman in governments adopting the town meeting form, the commission acting as a body in governments adopting the commission form, or the officer or officers so designated in the charter in governments adopting a charter.

(10) "Records administrator" means the person designated by the governing body as the individual responsible for keeping the records which part 8, chapter 2 of this title requires be kept.

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(11) "Elections administrator" means the person designated as the registrar by the governing body as provided in Title 23.

(12) "Legal advisor" means the person designated by the governing body as the legal counsel to the local government.

(13) "Financial administrator" means the person designated under section 47A-9-301.

(14) "Limited purpose local government" means any one of the independent authorities or districts which a local government is authorized to create by section 47A-3-405.

(15) "Subordinate service district" means an area within a local government established as provided in section 47A-6-103 with specific boundaries in which certain services or functions are carried out, and in which taxes may be levied to carry out the service or function.

(16) "Local improvement district" means an area within a local government with specific boundaries in which property is specially assessed to pay for a specific capital improvement benefitting the property assessed.

(17) "Qualified elector" means a resident of the local government qualified to vote under state law.

(18) "Commission" means the governing body of a local government.

(19) "Shall" imposes a duty.

(20) "May" confers a power.

(21) "Ordinance" means a local law of a general or permanent nature.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Regular election" means any local election required as a result of the expiration of the term of any elected official.

(24) "Special election" means any local election not for the purpose of electing officers. It may be held either at the time of the regular election or at any other time established as provided by law.

(25) "Study commission" means a local government study commission established pursuant to Title 47A, part 3, chapter 1.

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(26) "Study commissioners" means the elected or appointed members of the local government study commissions.

(27) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

(28) "Form" means a specific and formal governmental organization authorized as an alternative form of government by Title 47A, part 3, chapter 2.

(29) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(30) "Confederation" means a form of local government that provides for the distribution of the governmental authority between a county and one or more of the municipalities which are located within the county.

(31) "County merger" means a form of local government that provides for the joinder of the corporate existence and government of two or more counties.

(32) "Plan of government" means a certificate prepared by a study commission from the provision of Title 47A, part 3, chapter 2, that documents the basic form of government selected by the study commission including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(33) "Apportionment plan" means a certificate prepared by a study commission that contains the proposed commissioner districts for a new plan of government.

(34) "Consolidation plan" means a certificate prepared by a study commission that contains the plan for consolidation of existing units of local government.

(35) "Commissioner" means a member of the local government governing body.

SECTION 47A-1-202. GENERAL CONSTRUCTION. Except when a specific definition is given, words and phrases used in this title shall be construed according to their ordinary usage in the English language.

SECTION 47A-1-203. MULTI-MEMBER BODIES. When authority is given by this title to a group of two or more persons, action can be taken only by a majority of the group unless the statute authorizing the action specifically provides otherwise.

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SECTION 47A-1-204. CONFLICT ADJUSTMENT. (1) When a municipality is providing a service, the county in which the municipality is located is denied the power to provide that service within the jurisdiction of the municipality unless all of the following conditions are met:

(a) An ordinance authorizing the provision is adopted by the county governing body.

(b) The ordinance authorizing the provision is filed with the municipality.

(c) The ordinance authorizing the provision is not effective within the municipality for at least six (6) months following the date it is filed with the municipality.

(d) Within three (3) months of the filing with the municipality, the governing body of the municipality has not adopted an ordinance excluding the county from providing the service within the jurisdiction of the municipality, and within six (6) months of the filing with the municipality no date has been set for a referendum on the question.

(e) If the provision of a service by the county has been rejected by the electors of the municipality and at least two (2) years have elapsed since that rejection.

(2) In the event a municipality is excluded from a service provided by a county, no assessment, tax, fee, or levy may be imposed for support of the service or function within the jurisdiction of the municipality.

(3) A municipality may, by either ordinance or initiative, subject to the time limit specified in sub-section 1 (c), permit a county to assume the provision of a service which the municipality had previously performed or provided.

(4) If a county assumes the provision of a service from a municipality, the county shall also assume responsibility for all indebtedness and obligation incurred by the municipality relating to the service. The municipality shall transfer to the county all its rights, title, and interest in property relating to the service.

(5) No municipality may begin to provide any service which is being provided or performed by a county, unless the county governing body adopts an ordinance allowing the municipality to begin or refuses to extend the service to the municipality.

Source: Section 303 Penn.

SECTION 47A-1-205. RULES. Rules and regulations authorized by this title may be varied according to the population of the local government or any other criteria reasonably related to the complexity of the activities involved.

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PART 2, CHAPTER 1

INCORPORATION AND DISINCORPORATION OF MUNICIPALITIES

SECTION 47A-2-101. AREAS WHICH MAY INCORPORATE. (1) Any community which has at least one thousand (1000) inhabitants and is at least three (3) miles from a currently incorporated municipality may incorporate by following the procedures set out in this chapter.

(2) Any community which has at least one thousand (1000) inhabitants and is within three (3) miles of a currently incorporated municipality may incorporate if it is shown that the community could have been annexed but was refused annexation.

SECTION 47A-2-102. PETITION FOR INCORPORATION. (1) Proceedings for incorporation shall be initiated by petition.

(2) A petition requesting incorporation shall:

(a) state the plan of government and name of the proposed municipality;

(b) describe the boundaries of the proposed municipality;

(c) be filed with the chief executive officer of the county who shall submit it to the county governing body at its next general meeting; and

(d) be signed by fifty-one percent (51%) of the qualified electors residing in the proposed municipality.

(3) The county governing body shall determine the adequacy of the petition and, if adequate, shall call for and give notice of an election on the proposed incorporation.

SECTION 47A-2-103. ELECTION OF INCORPORATION. (1) The county governing body shall appoint election officials to conduct the election as provided in part 3, chapter 6 for questions submitted to the electors.

(2) Qualified electors are residents of the area included in the proposed municipality who are qualified electors under state law.

(3) Incorporation shall be granted upon an affirmative vote of a majority of those voting on the question.

SECTION 47A-2-104. ELECTION OF OFFICERS FOLLOWING INCORPORATION. (1) Upon incorporation, the governing body of the county shall give notice of an election to elect the officers specified in the plan of government adopted by the municipality.

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(2) Qualified electors are those qualifying under 47A-2-103 (2).

(3) The election shall be conducted by the county in the manner prescribed by part 3, chapter 6 for election of local government officials.

(4) Officers elected shall take office thirty (30) days following their election.

SECTION 47A-2-105. METHODS OF DISINCORPORATION. Any municipality may be disincorporated by either:

(1) automatic disincorporation; or

(2) election.

SECTION 47A-2-106. AUTOMATIC DISINCORPORATION. If the governing body of any incorporated municipality ceases to exist or fails to function for a period of two (2) years, the governing body of the county in which the municipality is located shall adopt a resolution disincorporating the municipality. Copies of the resolution shall be filed with the chief executive officer of the county and with the department of community affairs. The resolution shall state an effective date no sooner than sixty (60) days after the resolution's adoption.

SECTION 47A-2-107. DISINCORPORATION BY ELECTION. (1) Residents of a municipality may petition the county governing body for an election on the question of disincorporation.

(2) The county governing body, upon finding the petition to be adequate, shall order, within sixty (60) days, a special election to take place in the municipality on the question of disincorporation.

(3) The governing body of the county shall appoint election officials to conduct the election as provided in part 3, chapter 6 for questions submitted to the electors.

(4) If a majority of those voting on the question favor disincorporation, the governing body of the county shall adopt a resolution disincorporating the municipality. Copies of the resolution shall be filed with the chief executive officer of the county and with the department of community affairs. The resolution shall state an effective date no sooner than sixty (60) days after the resolution's adoption.

(5) If less than a majority of those voting on the question favor disincorporation, the governing body of the county shall deny the petition to disincorporate, in which case no election on the question of disincorporation may be held until after two (2) years from the date of the election.

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SECTION 47A-2-108. FINANCIAL CONDITION OF MUNICIPALITY.

(1) The director of the department of community affairs, upon receiving a copy of the disincorporation resolution, shall certify a current statement of the financial condition of the disincorporating municipality to the county governing body.

(2) The statement shall include, but not be limited to:

(a) a statement of all assets of the municipality, including any warrants, delinquent accounts, and taxes receivable;

(b) a statement of all municipal liabilities, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the municipality; and

(c) a schedule for the payment of liabilities.

(3) Under the supervision of the director of the department of community affairs, the financial administrator of the municipality shall draw a check for the amount of unencumbered cash in the municipality's treasury; and the check shall be made payable to the county and delivered to the chief executive officer of the county in which the disincorporating municipality is located. The money shall be placed in a special fund, to be drawn upon as provided in section 47A-2-110.

SECTION 47A-2-109. TRANSFER OF PUBLIC PROPERTY AND POLICE COURT RECORDS. Upon disincorporation of a municipality, every public officer of the municipality shall immediately turn over to the chief executive officer of the county in which the municipality is situated all public property in their possession; however, all court records of the police court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as prescribed for justices of the peace.

SECTION 47A-2-110. PAYMENT OF DEBTS AND COLLECTIONS OF RECEIVABLES OF MUNICIPALITY. (1) The disincorporation of a municipality does not invalidate or affect any right, penalty, or forfeiture accruing to the municipality, nor does it invalidate or affect any contract entered into or imposed upon the municipality. All the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the municipality.

(2) The county governing body in which the disincorporating municipality is situated shall provide for the payment and discharge of all liabilities and obligations, for the collection of any indebtedness due the municipality, and for the prosecution of any claims accruing to the municipality.

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(3) All instruments for the repayment of indebtedness are drawn by order of the governing body of the county on the fund established by section 47A-2-108 (3).

SECTION 47A-2-111. TAX LEVY IN THE EVENT OF INSOLVENCY.

(1) If, at any time after the disincorporation of a municipality, it is found that there is not sufficient money in the treasury to credit the special fund established by section 47A-2-108 (3) with which to pay any indebtedness of the municipality, the county governing body shall levy and collect from the territory formerly included within the municipality sufficient taxes or assessments to pay the indebtedness of the municipality as it becomes due.

(2) The tax or taxes, assessments, and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected, and are an additional tax on the property included within the territory, or portions thereof, for the payment of its debts. All monies shall be placed to the credit of the special fund established by section 47A-2-108 (3).

SECTION 47A-2-112. SURPLUS ASSETS DEPOSITED TO SPECIAL FUND.

If, after the payment of the debts of the municipality, and the liquidation, where possible, of tangible assets, any surplus remains in the special fund, it shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of section 47A-2-110 and 47A-2-114.

SECTION 47A-2-113. COLLECTION OF AMOUNTS DUE TO MUNICIPALITY.

(1) The county governing body shall provide for the collection of the amounts due to the disincorporated municipality and for the termination of its affairs, and any act or acts, necessary for that purpose and not otherwise provided for shall, upon order of the governing body, be performed by the officer or officers performing similar duties for the county, as if it had been performed by the proper officer of the municipality before disincorporation.

(2) The county shall succeed to and possess all rights of the municipality to indebtedness and has the power to sue for or otherwise collect any debts in the name of the county.

(3) All costs and expenses of ascertaining information and all other costs and expenses incurred by the governing body in the execution of the powers and duties of managing the affairs of the disincorporated municipality shall be paid out of the special fund established by section 47A-2-108 (3).

SECTION 47A-2-114. STATE AID. (1) If a municipality disincorporates, the county in which the municipality was located shall be entitled to any state funds which the municipality would have received had it not disincorporated.

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(2) The state funds shall be credited to the special fund established in section 47A-2-108 (3). If state funds are available to a municipality only after application, the governing body of the county may apply for the funds on behalf of the disincorporated municipality.

(3) After the liabilities of the disincorporated municipality have been satisfied and the special fund established by section 47A-2-108 (3) is terminated as provided in section 47A-2-112, the entitlement of the county to a share of state funds allocated to municipalities shall cease unless a service district has been created as provided in section 47A-6-107 which encompasses the area of the disincorporated municipality, in which case the county shall continue to be entitled to state funds allocated to municipalities.

(4) County entitlement to state funds allocated to municipalities shall be established by treating the area included within the service district as a municipality.

(5) State funds received by a county for a disincorporated municipality shall, after termination of the special fund, be credited to the service area and may be expended only for the specified purposes.

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PART 2, CHAPTER 2

ANNEXATION

SECTION 47A-2-201. POLICY AND PURPOSE. (1) It is declared as a matter of state policy that:

(a) Orderly urban development is essential to the continued economic development of the state.

(b) A municipality is the most appropriate unit of local government to provide the governmental service essential for orderly urban development and for the protection of health, safety, and welfare in areas being used intensively for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development.

(c) Annexation must be based on the interests of those being annexed and on the interests of the community as a whole.

(2) It is the purpose of this chapter to effect these policies by facilitating municipal annexation.

(3) To effect the forgoing policies and purposes, this chapter provides four (4) separate and distinct procedures by which areas may be annexed to a municipality. The first procedure is set out in section 47A-2-205, the second in section 47A-2-206, the third in section 47A-2-207, and the fourth in sections 47A-2-208-212.

SECTION 47A-2-202. DEFINITIONS. As used in this chapter:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a strip of unplatted land too narrow or small to be platted, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life, or inheritance, or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county records administrator.

(3) "Annexation" means the joining of an area to a municipality.

SECTION 47A-2-203. JUDICIAL REVIEW. (1) Within thirty (30) days following the passage of an annexation ordinance under authority of this chapter, any person owning property in the annexed area who believes that he will suffer material injury may file a petition in a district court seeking review of the action of the governing body if:

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(a) the municipal governing body failed to comply with a procedure set forth in this chapter; or

(b) if the body failed to meet requirements set forth as a part of that procedure and the requirements apply to his property.

(2) The petition shall state what exceptions are taken to the action of the governing body and what relief the petitioner seeks. The petition shall be served upon the municipality in the manner provided for the service of civil process.

(3) Within thirty (30) days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court:

(a) a transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth; and

(b) a copy of any report or other documents required by the procedure used to annex the area.

(4) If two or more petitions for review are submitted to the court, the court may consolidate all the petitions for review at a single hearing.

(5) At any time before or during the review proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it considers proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(6) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

(a) that the statutory procedure was not followed; or

(b) that the requirements of the procedure used to annex the area have not been met.

(7) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any petitioner; or

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the requirements of the procedure used if it finds the requirements have not been met; but the court cannot remand the ordinance to the municipal governing body with directions to add to the municipality an area which was not in-

cluded in the notice of public hearing.

(8) If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of the instructions, the annexation proceeding is considered void.

(9) Any party to the review proceedings, including the municipality, may appeal to the supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal; however, the district court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the municipality without regard to any part of the area concerning which an appeal is being made.

(10) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the district court or the supreme court on the effective date of the ordinance, then the ordinance shall be considered amended to make the effective date with respect to the area the date of the final judgment of the district or supreme court, whichever is appropriate, or the date the municipal governing body completes action to make the ordinance conform to the court's instructions in the event of remand.

SECTION 47A-2-204. ANNEXATION RECORDED. Whenever the limits of a municipality are enlarged in accordance with the provisions of this chapter, it shall be the duty of the chief executive or administrative officer of the municipality to record an accurate map of the annexed territory, together with a certified copy of the ordinance in the office of the county records administrator of the county or counties in which the annexed territory is situated and with the department of community affairs.

SECTION 47A-2-205. ANNEXATION BY ACCEPTANCE OF FINAL PLAT.

(1) Whenever an area contiguous to a municipality is subdivided as provided in "The Montana Subdivision and Platting Act", the subdivider may, after filing the final plat, submit the final plat to the governing body with a request that the area be annexed to the municipality.

(2) The governing body may either reject the request or adopt a resolution of intent to annex the area.

(3) If the governing body adopts a resolution of intent to annex the area, it shall set a date and time for a public hearing and give notice of the resolution and public hearing.

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(4) Following the public hearing, the governing body may adopt an ordinance annexing the area to the municipality or it may refuse to annex the area.

SECTION 47A-2-206. ANNEXATION OF WHOLLY SURROUNDED AREA.

(1) Any area wholly surrounded by a municipality may be annexed to the municipality in the following manner:

(a) The governing body shall find by resolution that it will be in the best interests of the municipality and its inhabitants and of the inhabitants, if any, of the area to annex it to the municipality.

(b) After adoption of the resolution, the governing body shall set a date for a public hearing on the annexation of the area and give notice of the resolution and public hearing.

(c) Following the public hearing, the governing body may adopt an ordinance annexing the area.

(2) A municipality proceeding under this section may not annex an area used for agriculture, mining, maintaining or operating a golf or country club, an athletic field, an aircraft landing field, a cemetery, or a place for public or private outdoor entertainment without the written consent of the owners.

SECTION 47A-2-207. EXTENSION OF BOUNDARIES TO INCLUDE CERTAIN AREAS. (1) Any tracts or parcels of land contiguous to a municipality may be annexed to the municipality and the boundaries of a municipality extended so as to include the annexed area in the following manner:

(a) The municipal governing body shall find by resolution that it will be in the best interests of the municipality and its inhabitants and of the inhabitants of tracts or parcels to be annexed to extend the municipal boundaries to include the annexed areas.

(b) The municipal governing body shall publish notice of the passage of the resolution and shall mail notice of the resolution to all resident freeholders in the area which the municipality proposes to annex. The notice shall include a statement that for a period of twenty (20) days after the first publication of notice, written objections to the proposed extension of boundaries will be received at the offices of the municipality.

(c) At the first regular meeting of the municipal governing body after the expiration of twenty (20) days from the first publication of notice, it shall consider all written objections received and if a majority of the resident freeholders in the area to be annexed have not objected in writing, the governing body may adopt an ordinance extending the boundaries of the municipality to include the area.

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(2) Whenever two or more adjacent tracts taken as a whole are contiguous to a municipality they may be included in one resolution under subsection (1) (a) although one or more of the tracts taken alone may not be contiguous to the municipal limits then existing.

SECTION 47A-2-208. INITIATION OF EXTENSION OF CORPORATE LIMITS. The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in sections 47A-2-208-212 upon the initiation of the procedure by the governing body itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one percent (51%) of the resident freeholders in the territory seeking annexation, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 47A-2-211. If the municipal governing body fails to act within sixty (60) days, the petitioners may appeal to the district court under the procedure set down in section 47A-2-203.

Source: Section 11-517.

SECTION 47A-2-209. PLANS TO PROVIDE SERVICES. A municipality exercising authority under sections 47A-2-208-211 shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 47A-2-211, prepare a report setting forth its plans to provide services to the annexed area. This report shall include:

(1) a map or maps of the municipality and adjacent territory to show the following information:

(a) the present and proposed boundaries of the municipality;

(b) the present streets, major trunk water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of the streets and utility lines as required in subsection (3) of this section; and

(c) the general land-use pattern in the areas to be annexed.

(2) a statement showing that the area to be annexed meets the requirements of section 47A-2-210; and

(3) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, the plans shall:

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(a) provide a long-range plan for the extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, and develop and add sections to the city;

(b) provide for the integration of existing service districts to the municipality;

(c) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as these services are provided within the rest of the municipality prior to annexation;

(d) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when these streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure these services, according to the policies in effect in the municipality for extending the services to individual lots or subdivisions;

(e) set forth a proposed timetable for construction of streets and utility lines, if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary; and

(f) provide a method to be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty per cent (50%) of those resident freeholders in the section to be annexed in the election, the area shall not be annexed. If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they propose to finance other services to be included within the district--mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality intends to share the tax burden for these services. If so, the area may be annexed without a bond issue under the provisions of this act.

Source: Section 11-518

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SECTION 47A-2-210. STANDARDS TO BE MET BEFORE ANNEXATION CAN OCCUR. (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipality's boundary at the time the annexation proceeding is begun;

(b) no part of the area shall be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38.

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines, streams, and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street. The outside boundary may not extend more than two hundred (200) feet beyond the right of way of the street.

Source: Section 11-519.

SECTION 47A-2-211. RESOLUTION OF INTENTION TO ANNEX--PUBLIC HEARING NOTICE--ACTION BY GOVERNING BODY AFTER HEARING. (1) The governing body of any municipality desiring to annex territory under the provisions of sections 47A-2-208-211 shall first pass a resolution stating the intent of the municipality to consider annexation. The resolution shall describe the boundaries of the area under consideration and fix and give notice of a date for a public hearing on the question of annexation, the date for the public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

(a) fix the date, hour and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in section 47A-2-209 will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for

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in section 47A-2-209 and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 47A-2-209. Following the explanation, all persons residing or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 47A-2-209 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 47A-2-209. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following the public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of the public hearing, which meets the requirements of section 47A-2-210 of this chapter, and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of section 47A-2-210 of this chapter. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 47A-2-209 of this chapter; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the municipality and shall be entitled to the same privileges and benefits as other parts of the municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a service district which has installed water, sewer, or other utilities or improvements, paid for by the residents of the district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

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(7) If a municipality is considering the annexation of two (2) or more areas which are all contiguous to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this act for the annexation of the areas.

Source: Section 11-520.

SECTION 47A-2-212. ANNEXATION ORDER. The governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes. This document shall be filed with the county in which the municipality to which the territory is sought to be annexed, is situated. From and after the date of filing the document with the county, or effective date of the ordinance, whichever is later, the annexation of the territory shall be complete. Henceforth, such annexed territory shall be a part of the municipal corporation, and the municipality to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

Source: Section 11-521.

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PART 2, CHAPTER 3

COUNTY BOUNDARIES AND COUNTY SEATS

SECTION 47A-2-301. COUNTY BOUNDARIES. (1) As provided by Article XI, section 2 of the Montana constitution, the counties of this state are those that existed on June 6, 1972.

(2) The boundaries of the counties of this state and their county seats are those heretofore set out in sections 16-201 to 16-263 of the Revised Codes of Montana 1947.

(3) The department of community affairs shall certify copies of the foregoing sections to the records administrator of each county to be filed as official records of the county.

(4) The department of community affairs shall maintain a record of the boundaries and county seat, and whenever a county boundary or the location of a county seat is changed as provided in this chapter, the governing body shall file with the department of community affairs a document showing the changes made.

SECTION 47A-2-302. INITIATION OF BOUNDARY ALTERATION OR CHANGE IN COUNTY SEAT. (1) Any alteration of county boundaries, including the merger of existing counties, or any change in the location of a county seat may be initiated by either a petition of the residents or a resolution of the governing body or bodies of the affected county or counties.

(2) The petition or resolution shall contain the following:

(a) a statement of purpose;

(b) a description of the present and proposed boundaries of the affected counties or the present and proposed location of the county seat;

(c) a request for an election on the proposal if a petition, or a date for the election if a resolution;

(d) if existing counties are to be merged, the plan of government for the merged county;

(e) the signatures of fifteen percent (15%) of the qualified electors in each affected county or the concurrence of the governing body of each affected county.

(3) The petitions shall be filed with the chief executive officer of each affected county who shall determine the adequacy of the petition with regard to their respective county. If the petition is found to be adequate, the executive officer shall certify it to the governing body of their respective county.

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(4) Upon receipt of the certified petitions, the governing bodies of the affected counties shall call a joint session at which the date of the election on the proposal shall be set.

SECTION 47A-2-303. ELECTION. (1) The governing body of each affected county shall give notice of the date set for the election.

(2) The election shall be conducted and the results canvassed and returned as provided in section 47A-3-610 for other questions submitted to a vote of the electors.

(3) No proposal shall become effective unless approved by a majority of those voting on the question in each county affected.

SECTION 47A-2-304. EFFECT OF APPROVAL - PUBLIC PROPERTY. (1) When an alteration of county boundaries transfers territory from one county to another, the county or counties from which the territory is removed shall transfer to the receiving county a percentage of the total assets of the transferring county equal to the percentage of the county's total taxable value represented by the territory being transferred.

(2) The receiving county shall assume liability for a percentage of the transferring county's total debts equal to the percentage of the total taxable value of the transferring county represented by the transferred territory.

(3) County roads and bridges shall not be considered county assets for the purposes of subsection (1). All of the transferring county's right, interest, or title to all roads and bridges in the transferred territory shall vest in the receiving county.

(4) Delinquent taxes and assessments shall be considered assets of the county for the purposes of subsection (1). All delinquent taxes and assessments attached to property being transferred shall be transferred to the receiving county which may collect them as provided by law.

SECTION 47A-2-305. EFFECT OF TRANSFER - TIME. (1) All alterations of county boundaries shall become effective on the assessment day following approval of the alteration except as provided in this section.

(2) An alteration of county boundaries which results in the merger of existing counties shall not take effect until the assessment day following the election of officers for the merged county. The election of new officials shall proceed as provided in part 3, chapter 1 of this title for the election of officials when a new form of government is adopted.

(3) A change in the location of the county seat shall be effective sixty (60) days after approval.

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PART 2, CHAPTER 4

CONSOLIDATION, CONFEDERATION AND MERGER

SECTION 47A-2-401. METHODS OF CONSOLIDATION, CONFEDERATION AND MERGER. (1) A county and one or more municipalities may consolidate or confederate as provided in part 3, chapter 1 of this title.

(2) Two or more counties may merge to form a single county as provided in part 2, chapter 3.

SECTION 47A-2-402. EFFECT OF CONSOLIDATION. (1) When a county and one or more municipalities consolidate, the consolidated unit replaces the participating county and municipality to form a single unit of local government.

(2) The consolidated unit of local government shall succeed to all rights, assets, and liabilities of the participating units.

(3) The consolidated unit shall have the powers and duties of both a county and a municipality.

(4) The consolidated unit shall have the form of government specified in the consolidation plan. The form may be amended as provided in part 3, chapter 1 of this title.

SECTION 47A-2-403. EFFECT OF CONFEDERATION. (1) When a county and one or more municipalities confederate, a coordinate unit of local government is created in which the county and the participating municipality or municipalities retain their separate identity and existence.

(2) The rights, assets, and liabilities of the confederating units shall be apportioned between the units as provided in the confederation charter.

(3) The confederated units shall have the powers and duties of both a county and a municipality apportioned as provided in the confederation charter.

(4) The confederated units shall be governed as provided in the confederation charter, which may be amended as provided in part 3, chapter 1 of this title.

SECTION 47A-2-404. EFFECT OF COUNTY MERGER. (1) When two or more counties merge, a county is created as a single unit of local government.

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(2) The new county succeeds to all rights, assets and liabilities of the merging counties.

(3) The new county has the powers and duties of a county.

(4) The new county shall have the form of government specified in the petition or resolutions calling for a merger. The form may be amended as provided in part 3, chapter 1 of this title.

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PART 3

LOCAL GOVERNMENT STRUCTURE, ORGANIZATION AND OPERATION

PART 3, CHAPTER 1

REVIEW, AMENDMENT AND ADOPTION
OF LOCAL GOVERNMENT FORM

SECTION 47A-3-101. AMENDMENT OF FORM OR CHARTER. (1) A form of government, or a charter, or an amendment to a form of government or a charter may be proposed by:

- (a) a study commission as provided in section 47A-3-108;
- (b) a resolution of the governing body; or
- (c) by petition of the qualified electors.

(2) The resolution or petition shall set out fully the form of government, or the charter, or the section or sections sought to be amended and the proposed amendment.

(3) An election on a form of government, or charter, or an amendment proposed by resolution or petition shall be held at the next general election of the local government, unless the petition or resolution calls for a special election. If a special election is called for, the governing body shall set a date for election no sooner than sixty (60) days or later than ninety (90) days after passage of the resolution or filing of the petition.

(4) An election on a form of government, or a charter, or an amendment shall be conducted and votes returned and canvassed in the manner provided by law for questions submitted to the electorate as provided in part 3, chapter 6 of this title.

(5) A form of government, or charter, or an amendment requires the affirmative vote of a majority of those voting on the question for passage.

(6) The form of government or charter takes effect in the manner set out in sections 47A-3-112-116.

(7) An amendment becomes effective at the beginning of the local government's fiscal year after the election results are officially declared.

(8) Following the adoption of a form of government, or a charter, or an amendment, the chief or administrative officer shall file a copy of the form of government, or charter, or amendment with the department of community affairs.

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SECTION 47A-3-102. STUDY COMMISSIONS. (1) The purpose of a study commission is to study the existing form, powers, and procedures for the delivery of services of a local government unit and to compare them with other forms, powers, and procedures available under the laws of the state of Montana.

(2) A study commission may be established only by an affirmative vote of the people. An election on the question of establishing a study commission shall be held whenever:

(a) the governing body of the local government unit calls for an election by resolution; or

(b) a petition calling for an election is submitted to the commission; or

(c) ten (10) years have elapsed since the electors have voted on the recommendations of a study commission or on the question of establishing a study commission.

(3) The number of positions, not less than five (5), on the study commission shall be set out in the resolution or petition calling for the election on the question of establishing a study commission. If the election is called because ten (10) years have elapsed, the study commission shall consist of five (5) members unless the local government commission by resolution declares that a larger number shall be elected.

(4) The question of establishing a study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐

For the establishment of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations thereon.

☐

Against the establishment of a study commission.

(5) The question of establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

SECTION 47A-3-103. ELECTION OF MEMBERS. If the question of establishing a study commission is approved, study commission members shall be elected in the following manner:

(1) There shall be placed on the ballot the names of study commission candidates who have filed declarations of nomination as provided in section 23-3304. Candidates shall be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissions.

(2) Candidates for study commission positions shall be qualified electors of the local government for which the study commission has been established.

(3) Those candidates receiving the highest number of votes shall be declared elected.

(4) The term of study commission members shall be for the duration of the commission's existence.

SECTION 47A-3-104. TIMETABLE FOR ELECTIONS. Dates for the required elections shall be set by the governing body within the following limits:

(1) An election on the question of establishing a study commission shall be held no sooner than sixty (60) days and no later than ninety (90) days after the passage of the resolution or the certification of the petition calling for an election on the question.

(2) An election to fill the positions on a local government study commission shall be held no sooner than ninety (90) days or later than one hundred and twenty (120) days after the election establishing the study commission.

(3) Votes cast on the question of establishing a study commission and for electing study commission members shall be counted, canvassed, and returned by the election officials of the local government which the study commission is to examine.

(4) Except as otherwise provided in this chapter, each election conducted under this chapter shall be in the same manner as the election of other local officials.

SECTION 47A-3-105. ORGANIZATION OF THE STUDY COMMISSION.

(1) Not later than ten (10) days after all study commissioners are elected or appointed, the study commissioners shall meet and organize at a time which shall be set by the governing body of the local government which the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairperson who will serve until a permanent chairperson is selected.

(3) Meetings of the study commission shall be held upon the call of the chairperson, vice-chairperson in the absence or inability of the chairperson, or a majority of the study commissioners. The chairperson shall announce the time and place of the meetings of the study commission.

(4) The study commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the study commission during regular office hours.

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(5) A majority of the study commissioners shall constitute a quorum for the transaction of business, but no recommendation of a study commission shall have any legal effect unless adopted by a majority of the whole number of study commissioners.

(6) The study commission shall have the power to adopt rules for its own organization and procedure.

(7) Study commissioners shall receive no compensation other than for actual and necessary expenses incurred in their official capacity.

SECTION 47A-3-106. ADMINISTRATIVE POWERS. A study commission shall have the following administrative powers. (1) The study commission may employ and fix the compensation and duties of necessary staff. State, municipal and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they shall receive no other compensation, except mileage and per diem from the study commission.

(2) The study commission may establish advisory boards and committees, including on them, persons who are not study commissioners.

(3) The study commission may retain consultants.

(4) The study commission may contract and cooperate with other agencies, public or private, as it considers necessary for the rendition and affording of the services, facilities, studies, and reports to the study commission as will best assist it to carry out the purposes for which the study commission was established. Upon request of the chairperson of the study commission, state agencies, counties, other local governments, and the officers and employees thereof shall furnish the commission information as may be necessary for carrying out its function which may be available to or procurable by the agencies or units of government.

(5) The study commission may do any and all other things as are consistent with and reasonably required to perform its function under this chapter.

SECTION 47A-3-107. FINANCIAL ADMINISTRATION. (1) The study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) For the support of the study commission, for each fiscal year the study commission is in existence, the local government shall appropriate the equivalent of at least one (1) mill. The local government may, in its discretion, provide additional funds.

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(3) The study commission may apply for and accept available private, state, or federal funds and may accept donations from any source.

(4) All monies received by the study commission shall be deposited with the county or municipal financial administrator. The financial administrator is authorized to disburse budgeted funds of the study commission on its order. Unexpended funds of the study commission shall not revert to the general fund of the local government at the end of the fiscal year, but shall carry over to the study commission's budget for the following fiscal year. Upon termination of the study commission, unexpended funds shall revert to the general fund of the local government.

SECTION 47A-3-108. SCOPE OF STUDY COMMISSIONS'S RECOMMENDATIONS.

(1) A study commission elected to examine the government of a municipality may:

- (a) recommend amendments to the existing form of government;
- (b) recommend any form of government authorized by part 3, chapter 2 of Title 47A; or
- (c) draft a charter; or
- (d) recommend disincorporation.

(2) A study commission elected to examine the government of a county may:

- (a) recommend amendments to the existing form of government;
- (b) recommend any form of government authorized by part 3, chapter 2 of Title 47A; or
- (c) draft a charter; or
- (d) recommend municipal-county consolidation; or
- (e) recommend municipal-county confederation; or
- (f) in cooperation with a study commission in an adjoining county, recommend county merger.

SECTION 47A-3-109. FINAL REPORT. (1) Every study commission shall adopt a final report. The final report shall contain the following materials and documents, each signed by a majority of the study commission members:

- (a) a certificate containing the "plan of government" of the existing form of local government;
- (b) a certificate containing the "plan of government" of the proposed new form of local government, which must differ in some manner from the existing form of local government;

(c) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government";

(d) a certificate establishing the date of the special or general election at which the alternative form of government shall be presented to the qualified electors and a certificate establishing the form of the ballot question or questions;

(e) a certificate establishing the dates of the first primary and general elections if the proposal is approved and establishing the effective date of the proposal if approved;

(f) a comparison of the existing form and proposed form of local government. It may contain a statement on the strengths and weaknesses of the existing and proposed form of local government, and it may contain information that supports the adoption of the proposed form and information that supports retention of the present form; and

(g) any minority report signed by members of the commission that do not support the majority proposal.

(2) If the study commission proposes disincorporation, city-county consolidation, city-county confederation, or county merger, the final report shall contain the following additional material and documents:

(a) For disincorporation:

(i) a certificate of disincorporation instead of a plan of government; and

(ii) a recommended plan of disincorporation including suggested ordinances and service districts.

(b) For municipal-county consolidation, a consolidated plan which shall:

(i) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(ii) provide for establishment of service areas;

(iii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under its proposal;

(iv) provide the official name of the consolidated unit of local government;

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(v) provide for the transfer, reorganization, abolition, or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to excluded municipalities, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts; and

(vi) include other provisions which the study commission elects to include and which are consistent with state law.

(c) For city-county confederation, a charter which shall:

(i) provide for a confederated system of county and city or town government;

(ii) authorize the comprehensive and simultaneous transfer of services to a system in which the county provides county-wide and area-wide services and municipalities provide local services;

(iii) permit future transfer of responsibility for provision of services;

(iv) establish a separate legislative body and chief administrative office for the county and each participating municipality in the confederated local government;

(v) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(vi) provide for establishment of service areas;

(vii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments confederated under the charter;

(viii) provide the official name of the confederated local government;

(ix) provide for the transfer, reorganization, abolition or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the confederated governments. Or the plan may grant the legislative bodies of the confederated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to excluded municipalities, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts; and

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(x) include other provisions which the study commission elects to include and which are consistent with state law.

(d) For county merger a consolidation plan which shall:

(i) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(ii) provide for establishment of service areas;

(iii) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form;

(iv) provide the official name of the consolidated local government;

(v) provide for the transfer, reorganization, abolition, or absorption of all existing boards, bureaus, commissions, agencies, and political subdivisions of the consolidated governments except incorporated municipalities. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, abolish, or absorb the entities with or without referendum requirements. This section shall not apply to cities or towns, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts; and

(vi) include other provisions which the study commissions elect to include and which are consistent with state law.

(3) The study commission shall file four (4) copies of the final report with the department of community affairs.

SECTION 47A-3-110. STUDY COMMISSION TIMETABLE. Each local study commission or combination of local study commissions shall:

(1) conduct one or more public hearings within one hundred and eighty (180) days of its organization for the purpose of gathering information regarding the current form, functions, and problems of the local government or governments;

(2) formulate, reproduce, and distribute within 365 days of its organization a tentative proposed report. No sooner than thirty (30) days after the report is distributed, conduct one or more public hearings on the tentative report. The tentative report shall contain the same categories of information required to be included in the final report of the commission;

(3) adopt within 455 days of its organization the final report of the commission, and set the date for a special election on the question of adopting a new form of government;

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(4) prepare or cause to be prepared sufficient copies of its final report, including the full text of the proposed form, any apportionment plan, and the study commission recommendation. The new report must be available to the qualified electors not later than thirty (30) days prior to the election on the issue of adopting the alternative form. Copies of the final report may be distributed to qualified electors or residents of the local government or governments affected;

(5) publish on two (2) successive weeks in a newspaper of general circulation throughout the local governments affected a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government; and

(6) may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and potential areas for interlocal agreements.

SECTION 47A-3-111. VOTE ON ALTERNATIVE FORM. (1) The study commission shall authorize the submission of the alternative form of government to the voters at a special election held within 505 days of the study commission's organization. The special election may be held with a school, primary, general, or other election.

(2) A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 455 days of the study commission's organization. The records administrator shall prepare and print notices of the special election.

(3) Elections on the issue of adoption of a proposed form of government by a local government shall be conducted, returned, and canvassed and the result declared in the same manner as provided by law in respect to initiatives and referenda. The cost of the election shall be budgeted by the local government. The affirmative vote of a simple majority of those voting on the question shall be required for adoption.

(4) In any election involving the question of consolidation or confederation, each question shall be submitted to the qualified voters in the county and shall require an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There shall be no requirement for separate majorities in local governments voting on consolidation or confederation.

(5) In any election involving the question of county merger, the questions shall be submitted to the qualified electors in the counties affected and shall require a majority of the votes cast on the questions in each affected county for adoption.

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(6) (a) The question of adopting the form of government proposed by the study commission shall be submitted to the qualified electors in substantially the following form:

Vote for one:

☐ For adoption of the (self-government charter or form of government) proposed in the report of the (insert name of local government) local government study commission.

☐ For the existing form of government.

(b) The whole number of ballots shall be divided into two (2) equal sets. No more than one (1) set shall be used in printing the ballot for use in any one (1) precinct and all ballots furnished for use in one precinct shall be identical. The existing form of government shall be printed as the first item and the proposed form as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one (1) precinct, the existing form shall be listed first on the ballot.

(7) A proposed alternative form shall be submitted to the voters as a single question, except that the sub-options within the alternative form of local government authorized in part 3, chapter 2, Title 47A, Revised Codes of Montana 1947, and the sub-options authorized in a charter may be submitted to the qualified electors as separate questions. No study commission may submit more than three (3) separate sub-options, and no sub-option shall contain more than two (2) alternatives. If a sub-option is submitted to the voters, only the ballot alternatives within that sub-option receiving the highest number of affirmative votes shall be considered approved and included in the alternative form of government. The question of adopting a sub-option shall be submitted to the qualified electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of four years.

☐ Shall be appointed for a term of four years by the chairperson of the local governing body.

SECTION 47A-3-112. GENERAL TRANSITION. (1) If the electors disapprove the proposed new form of local government, the local government shall retain its existing form.

(2) (a) A new alternative form of local government and/or consolidation or confederation plan approved by the voters shall take effect when the new officers take office as provided in section 47A-3-115, except as otherwise provided in this title and any charter or consolidation plan.

(b) Provisions creating offices and establishing qualifications for office and any "apportionment plan" shall become effective immediately for the purpose of electing officials.

(3) (a) A copy of the existing or proposed "plan of government" ratified by the voters and any "apportionment plan" or "consolidation plan" shall be certified by the chairperson of the study commission and filed by the study commission with the department of community affairs and the records administrator.

(b) The approved plan filed with the department of community affairs shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

(4) (a) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(b) Within two (2) years after ratification of the consolidation, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(5) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

(6) The study commission shall prepare an advisory plan for orderly transition to a new form of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(7) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved plan and necessary or convenient to place it into full effect. Where any question arises concerning the transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with this title.

SECTION 47A-3-113. TRANSITION-OFFICERS AND EMPLOYEES. (1)

The members of the governing body, holding office on the date a new alternative form of government is adopted by the qualified electors of the local government, shall continue in office and in the performance of their duties until the governing body authorized by the new alternative forms has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality shall continue in the performance of the duties of their respective offices and positions until provision shall be made for the performance or discontinuance of the duties, or the discontinuance of the offices or positions.

SECTION 47A-3-114. ELECTION OF NEW OFFICIALS. (1) Within ten

(10) days of an election at which a new form of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government.

(2) The order shall specify a date for the primary election not more than seventy (70) days or less than fifty (50) days after the election approving the new form and a date for the general election sixty (60) days after the primary.

(3) The election shall be conducted, the vote canvassed, and the result declared in the manner provided by law for local government elections.

SECTION 47A-3-115. ORGANIZATION OF THE GOVERNING BODY. (1)

The first meeting of a new governing body for a new form of government shall be held at 10:00 a.m. sixty (60) days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

SECTION 47A-3-116. JUDICIAL REVIEW. Judicial review to

determine the validity of the procedures whereby any charter or alternative form of government is adopted may be had by petition of ten (10) or more registered voters of the local government brought within sixty (60) days after the election at which the charter or form of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by this act and the validity of the manner in which the charter or form of government was approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or form of government shall not be considered invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

Part 3, Chapter 2, Title 47A
R.C.M. 1947

47A-3-201. Declaration of purpose. (1) The purpose of this chapter is to comply with Article XI, section 3 (1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) This chapter establishes the alternative forms of government for cities, towns, counties, and consolidated governments. This chapter shall be liberally construed to facilitate the adoption of a form of local government. The procedure to adopt, amend, or abandon these forms is provided in sections 16-5101 et seq.

47A-3-202. Adoption of alternative forms. Each local government in the state shall adopt one of the alternative forms of government provided for in this chapter including one of each sub-option authorized: the commission-executive form (which may also be called the "council-executive", the "council-mayor", or the "commission-mayor" form), the commission-manager form (which may also be called the "council-manager" form), the commission form, the commission-chairman form, the town meeting form, or the charter form.

47A-3-203. Commission-executive form. (1) The commission-executive form (which may be called the "council-executive", the "council-mayor", or the "commission-mayor" form) consists of an elected commission (which may be referred to as the "council" and one elected executive (who may be referred to as the "mayor") who is elected at large.

(2) The executive shall:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer affairs of the local government;
- (d) carry out policies established by the commission;
- (e) recommend measures to the commission;
- (f) report to the commission on the affairs and financial condition of the local government;
- (g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (h) report to the commission as the commission may require;
- (i) attend commission meetings and may take part in discussions;
- (j) execute the budget adopted by the commission;
- (k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The executive:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local

government. Such administrative assistants shall be answerable solely to the executive.

(b) The executive may:

(i) appoint and remove all employees of the local government; or

(ii) appoint and remove, with the consent of a majority of the commission, all employees of the local government; or

(iii) appoint, with the consent of a majority of the commission, all department heads. The executive may remove department heads and may appoint and remove all other department employees; or

(iv) appoint and remove, with the consent of a majority of the commission, all department heads. The executive may appoint and remove all other employees of the local government.

(c) The executive may:

(i) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission; or

(ii) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(iii) sign all ordinances and resolutions with no veto power.

(d) The executive may:

(i) prepare the budget and present it to the commission for adoption; or

(ii) prepare the budget in consultation with the commission and department heads.

(e) The executive may:

(i) exercise control and supervision of the administration of all departments and boards; or

(ii) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

(f) A financial officer (who may be called the "treasurer"):

(i) shall be elected; or

(ii) shall be appointed by the executive with the consent of the council; or

(iii) shall be selected as provided by ordinance; or

(iv) may, at the discretion of the commission, be selected as provided by ordinance.

(g) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(h) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(i) The commission shall have a chairman who shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance.

(j) The presiding officer of the commission shall be:

(i) the chairman of the commission who may vote as other members of the commission; or

(ii) the executive who may vote as the commissioners; or

(iii) the executive who shall decide all tie votes of the commission, but shall have no other vote. The chairman of the commission shall preside if the executive is absent; or

(iv) the executive, but he may not vote.

(k) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(1) The size of the commission, which shall be a number not less than three (3), shall be established when the form is adopted by the voters, and;

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(m) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-204. Commission-manager form. (1) The commission-manager form (which may be called the "council-manager" form) consists of an elected commission (which may be called the "council") and a manager appointed by the commission who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

(2) The manager shall be appointed by the commission for an indefinite term on the basis of merit only, and removed only by a majority vote of the whole number of the commission.

(3) The manager shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform the duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments,

agencies and offices of the local government unit except as otherwise provided by law or ordinance;

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in the discussion, but he may not vote;

(l) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(m) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager;

(n) appoint members of temporary advisory committees established by the manager.

(4) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(5) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

(6) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(i) the chairman with the consent of the commission;
or

(ii) the manager with the consent of the commission; or

(iii) the commission.

(b) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(c) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(d) The chairman of the commission shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) elected by the qualified electors for a term of office; or

(iii) selected as provided by ordinance.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(7) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-205. Commission form. (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance; or

(iii) elected directly by the voters for a term established by ordinance.

(d) The commission:

(i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3 (2), of the Montana constitution, may not exceed six (6) years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local

government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(e) A treasurer:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(f) A surveyor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(g) A superintendent of schools:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(h) An assessor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(i) A coroner:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(j) A public administrator:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(k) An auditor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(4) Local governments that adopt this form shall have general government powers.

47A-3-206. Commission-chairman form. (1) The commission-chairman form consists of an elected commission (which may also be referred to as the "council"), and a commission chairman (who may also be referred to as "mayor" or as "president") elected by the members of the commission from their own number.

(2) The commission chairman (who may also be referred

to as "mayor") shall be elected by the members of the commission from their own number to serve at the pleasure of the commission. He shall: be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government, and:

- (a) enforce laws, ordinances, and resolutions;
- (b) perform duties required of him by law, ordinance, or resolution;
- (c) administer the affairs of the local government;
- (d) direct, supervise, and administer all departments, agencies, and offices of the local government, except as otherwise provided by law or ordinance;
- (e) carry out policies established by the commission;
- (f) prepare the commission agenda;
- (g) recommend measures to the commission;
- (h) report to the commission on the affairs and financial condition of the local government;
- (i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (j) report to the commission as the commission may require;
- (k) attend commission meetings and may take part in discussions;
- (l) execute the budget adopted by the commission;
- (m) appoint with the consent of the commission all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;
- (n) appoint with the consent of a majority of the commission all department heads. The chairman may remove department heads and may appoint and remove all other employees;
- (o) prepare the budget and present it to the commission for adoption;
- (p) exercise control and supervision over the administration of departments and boards.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The commission chairman:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman.

(d) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(e) The size of the commission, which shall be a number of not less than five (5), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(f) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-207. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator. The town meeting form may be adopted only by incorporated cities or towns of less than two thousand (2,000) persons as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this section. Any unit of local government which adopts this form may retain it even though its population increases to more than two thousand (2,000).

(2) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

(3) (a) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of ten percent (10%) of the qualified electors of the town, but in no case by less than ten (10) qualified electors.

(b) All qualified electors of the town may attend the town meeting, take part in the discussion and vote on all matters coming before the town meeting. Others may attend but shall not vote nor take part in the discussion except by a majority vote of the town meeting.

(c) A quorum shall consist of at least ten percent (10%) of the qualified electors of the town but a higher quorum requirement may be established by a majority vote of the town meeting.

(d) The election of town officials shall be

nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(e) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

(4) An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman who shall post notice at least two (2) weeks prior to the convening of all annual and special town meetings. Upon written petition of at least ten percent (10%) of the qualified electors of the town, but not less than ten (10) qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting except no matter dealing with finance or taxation shall be considered under "other business".

(5) The town meeting shall elect a town chairman for a term of not less than one (1) year or more than two (2) years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(6) The town chairman shall be the chief executive officer of the town and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(7) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

(8) Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

(9) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The town meeting shall:

(i) elect a town meeting moderator for a term of one (1) year who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(ii) designate the town chairman as presiding officer of all annual and special town meetings.

(b) The town chairman:

(i) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion; or

(ii) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion.

(10) The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commission shall preside over the election of the presiding officer of the town after which the presiding officer of the town shall preside.

(11) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

- (a) general government powers; or
- (b) self-government powers.

47A-3-208. Charter form. (1) The purpose of this section is to comply with Article XI, section 5 (1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

(3) A charter form of government shall possess self-government powers.

(4) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(5) The charter shall provide for an elected legislative body, called a commission or council, or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(6) The charter shall provide for the nomination and election of commissions at-large, or by districts in which candidates must reside and which are apportioned by population, or by a combination of districts in which candidates must reside and which are apportioned by population and at-large.

(7) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office, except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote, the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative

functions among two or more officials specified as above, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(8) The charter may establish other legislative, administrative, and organizational structures.

(9) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

(10) Charter provisions may not conflict with the provisions of Title 47-A, Part 7 which establish statutory limitations on the powers of self-government units.

(11) Charter forms are subject to state laws establishing election, initiative and referendum procedures and charters shall not contain provisions establishing election, initiative and referendum procedures.

(12) The charter shall not contain provisions establishing or modifying local court systems.

(13) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

(14) The charter may contain prohibitions on the exercise of power by a unit of local government.

(15) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(16) The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

(17) The listing of charter provisions in this section shall not be construed to prevent the inclusion of additional provisions in charters.

(18) A charter may be amended only as provided by state law.

History: Enacted Sec. 1, Chap. 344, S.L. 1975.
Effective May 2, 1977.

PART 3, CHAPTER 3

LEGISLATIVE ORGANIZATION AND PROCEDURE

SECTION 47A-3-301. GENERAL POWER. The legislative power of a local government is vested in the governing body.

SECTION 47A-3-302. COMPOSITION, QUALIFICATION AND VACANCIES.

(1) The governing body shall be composed of the number of members provided for in the form of government adopted by the electors.

(2) Any qualified elector of the local government shall be eligible for election to the governing body if he meets the district residence requirements imposed by the local government.

(3) In the event of the vacancy, except as provided by charter, the governing body shall by majority vote of the remaining members appoint a qualified person to fill the vacancy until the next local government election at which time the remaining term shall be filled as provided by law for any seat on the governing body.

(4) Before taking office each member of the governing body shall take and subscribe the oath or affirmation set out in Article III, section 3 of the Montana constitution.

(5) Any member of a governing body who loses eligibility for election to his seat on the governing body shall immediately forfeit his office. Any member of a governing body who, without excuse, fails to attend two consecutive regularly scheduled meetings of the governing body, or who absents himself from the local government continuously for thirty (30) days without consent of the governing body, may be removed from office by a majority vote of the whole governing body.

SECTION 47A-3-303. PROCEDURE. (1) The governing body shall meet once a month at a designated time and place except that more frequent meetings may be required by ordinance.

(2) An emergency meeting may be called by the executive, the chairperson of the governing body, or one third (1/3) of the membership of the governing body on twenty-four (24) hour notice, except that if all members of the governing body waive notice in writing an emergency meeting may be had without notice.

(3) A majority of the governing body constitutes a quorum and is necessary to conduct any business.

(4) Action by the governing body requires a majority vote of those members present.

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(5) All action by the governing body shall be by ordinance or resolution.

(6) Contracts shall be entered into by resolution.

(7) The governing body shall provide for the keeping of written minutes which include the final vote on each ordinance or resolution indicating whether each individual member voted yes or no on the question.

(8) An agenda shall be posted twenty-four (24) hours prior to any regular meeting.

(9) The governing body may adopt, by resolution, additional rules, not in conflict with this chapter, governing its organization and procedure.

SECTION 47A-3-304. CLERK AND STAFF. (1) The governing body may appoint a person to serve as clerk of the governing body. The person appointed may be an employee of the executive branch.

(2) The governing body may employ additional staff.

SECTION 47A-3-305. ORDINANCE REQUIREMENTS. (1) All ordinances and resolutions shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance must be read at two (2) meetings of the governing body not less than twenty (20) days apart and after the first reading must be posted at the seat of the local government and copies made available to the public.

(3) In the event of an emergency, the governing body may waive the waiting period and the second reading. An ordinance passed in response to an emergency shall recite facts giving rise to the emergency and requires a two thirds (2/3) vote of the governing body for passage. An emergency ordinance shall be effective on passage and approval.

(4) After passage and approval, all ordinances shall be signed by the chairperson of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(5) No ordinance other than an emergency ordinance shall be effective until thirty (30) days after passage.

(6) If the form of government allows the executive to veto an ordinance, this power must be exercised prior to the next regularly scheduled meeting of the governing body. If the executive fails to act the ordinance shall be approved. If the executive vetoes an ordinance, the governing body must act at its next regularly scheduled meeting to either override or confirm the veto. If the veto is overridden or the executive fails to act, the ordinance shall take effect thirty (30) days after passage.

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(7) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval. Ordinances entered in the register shall be numbered either sequentially or by a decimal system and indexed at regular intervals.

(8) No later than 1980 and at five (5) year intervals thereafter ordinances shall be compiled into a uniform code and published.

SECTION 47A-3-306. PUBLIC PARTICIPATION. (1) The governing body shall allow public participation in its deliberations subject to the procedural rules as it may by resolution establish.

(2) All documents and records of the governing body shall be public records. They shall be available to the public for examination and copying at the local government offices during regular business hours.

(3) All meetings shall be open to the public except that the public may be excluded by a majority vote when the governing body considers the hiring, discharge or discipline of local government employees or when it considers matters of purchasing, competition or bargaining which if made public might adversely affect the financial interests of the local government.

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PART 3, CHAPTER 4

DEPARTMENTS, BOARDS, SUBORDINATE SERVICE AREAS
AND LIMITED PURPOSE LOCAL GOVERNMENTS

SECTION 47A-3-401. CREATION OF DEPARTMENTS. (1) Unless the adopted form of government specifies department structure, the governing body shall prescribe, by ordinance, the executive department structure, and may prescribe the functions of all departments, except that no function required by this title may be discontinued.

(2) Two (2) or more local governments may provide for joint departments. The joint departments shall be established by inter-local agreements.

(3) The governing body shall by ordinance assign all functions mandated by state law to an appropriate department.

(4) The functions assigned to the following positions by this Title shall be allocated by ordinance among the departments and elected officials:

records administrator
election administrator
legal advisor
financial administrator
budget administrator.

(5) The following authorized county functions shall be allocated by ordinance among the departments and elected officials:

chief law enforcement administrator
clerk of the district court
assessor
county prosecutor.

SECTION 47A-3-402. DIRECTION OF DEPARTMENTS. (1) All departments and agencies shall be under the direction and supervision of the administrative officer or officers specified in the form of government in force in the local government.

(2) Department heads shall be selected in the manner provided by the form of government in force in the local government. If the form so provides, or with the consent of the governing body, the chief executive or administrative officer may act as head of one (1) or more departments.

(3) The governing body may provide for departments headed by elected officials.

(4) The governing body shall prescribe, by ordinance, the duties and powers of department heads.

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(5) The governing body may require reports from the chief executive and for purposes of investigation may require reports from department heads and employees.

SECTION 47A-3-403. BOARDS. (1) The governing body may by ordinance establish advisory or administrative boards.

(2) An advisory or administrative board may be assigned responsibility for a department or a subordinate service area.

(3) An advisory board may furnish advice, gather information, make recommendations, and perform other activities as may be necessary to comply with federal funding requirements. It does not have the power to administer programs or set policy.

(4) An administrative board may have powers as granted by ordinance, except that it may not be authorized to pledge the credit of the local government or impose a tax on property without the specific approval of the governing body. It may administer programs and set policy.

(5) Cooperating local governments may create joint boards.

SECTION 47A-3-404. APPOINTMENT OF YOUTH BOARDS. (1) Notwithstanding any provision of law relating to age, the local government appointing authority for a local government board may appoint a sixteen (16) to eighteen (18) year old local government resident to a board.

(2) A young person may be appointed to a local government board having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law or ordinance.

(3) An individual appointed to a local government board under this section is entitled to the rights, privileges, and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

Source: AS Section 29.23.401 (Alaska)

SECTION 47A-3-405. SUBORDINATE SERVICE DISTRICTS. (1) Subordinate service districts may be established as provided in section 47A-6-107.

(2) Subordinate service districts may be administered directly as a part of a department with or without an advisory board or by an administrative board.

(3) Subordinate service districts administered by an administrative board shall be attached to a department for purposes of budget submission.

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(4) The budget for each subordinate service district shall be submitted by the department to which it is attached as a separate item in the department budget.

SECTION 47A-3-406. LIMITED PURPOSE LOCAL GOVERNMENTS. (1) A local government may establish limited purpose local governments in the manner provided by law.

(2) Limited purpose local governments include municipal and regional airport authorities, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, housing authorities, hospital districts, cemetery districts, and county water and sewer districts.

(3) Limited purpose local governments shall prepare budgets in the manner provided by law.

SECTION 47A-3-407. OFFICE OF THE CHIEF EXECUTIVE. (1) The chief executive may establish divisions in his office to carry out his assigned responsibilities.

(2) Each fiscal year the chief executive shall file a plan showing the organizational chart of the executive branch with the governing body and the department of community affairs. The plan shall indicate the number of employees and the lines of responsibility.

SECTION 47A-3-408. TRANSITION TO NEW FORM OF GOVERNMENT. (1) Following a change in the form of government, if the new form does not specify a department structure, the department structure of the preceding form of government shall continue to function and remain in existence until a new department structure is adopted.

(2) Within eighteen (18) months of the change in the form of government, the chief executive shall submit a proposed department structure to the governing body.

(3) Within six (6) months of the submission of a proposed department structure, the governing body shall adopt a department structure.

SECTION 47A-3-409. TRANSITION OF EXISTING BOARDS. The state laws providing for the organization and operation of airport board, library board, public cemetery board, fire district board, health board, local improvement district committee of supervisors, mosquito abatement district board, museum board, park board, off-street parking commission, police reserve fund board, department of public safety supervisors, refuse disposal district boards, television district boards, urban renewal boards, and weed control boards shall be given the status of local ordinance until June 30, 1979 and such boards shall continue to function under the respective laws until the boards are reorganized by local ordinance.

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After June 30, 1979 such laws shall have no further force and effect as local ordinances and the boards shall cease to exist unless provided for by local ordinance.

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PART 3, CHAPTER 5

PROVISIONS COMMON TO ALL FORMS OF LOCAL GOVERNMENT

SECTION 47A-3-501. NOTICE. Unless otherwise specifically provided:

(1) When notice of a hearing or other official act is required by this title, the notice shall be published two (2) times with at least seven (7) days separating each publication. The first publication shall be no more than twenty-one (21) days prior to the action and the last no less than three (3) days prior to the action.

(2) Publication shall be in a newspaper of general circulation in the local government. Except that in a municipality with a population of five hundred (500) or less, or in which no newspaper is published, publication may be made by posting in three (3) public places in the municipality which have been permanently designated by ordinance.

(3) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken; and

(c) any other information required by the specific section requiring notice.

SECTION 47A-3-502. MAIL NOTICE. (1) Unless otherwise specifically provided, when a local government is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first class rate; or

(b) sending the notice by registered or certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a local government.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken; and

(c) any other information required by the specific section requiring mail notice.

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SECTION 47A-3-503. PETITION. (1) Whenever a petition is authorized by this title, unless the section authorizing the petition establishes different criteria, it shall be valid if it is signed by fifteen percent (15%) of the electors of the local government and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the address of the signer's place of residence and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within ninety (90) days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the elections administrator who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within ten (10) days of the date the petition was filed, the elections administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained and the petition may be refiled prior to the deadline for filing the petition.

(5) Within ten (10) days of its second filing the elections administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice, however, to the filing of or new petition to the same effect.

(6) If a petition is determined adequate, the elections administrator shall certify its adequacy and submit it to the governing body without delay.

SECTION 47A-3-504. PUBLIC HEARING. (1) As required by this Title, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

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(3) Public hearings may be held at regular or special meeting of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearing, the governing body may designate a subcommittee to conduct public hearings.

SECTION 47A-3-505. PROTEST. (1) Whenever a protest is authorized by this title, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protester's qualifications to protest the action against which the protest is lodged;

(c) the address of the person protesting;

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a local government shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one (1) person. A protest signed by more than one (1) person is a valid protest by each signer.

(4) A person may withdraw a previously filed protest at any time prior to final action by the governing body.

SECTION 47A-3-506. SIGNATURES. The signatures and addresses on petitions and protests shall be the same as the signatures and addresses on voter registration cards.

SECTION 47A-3-507. OATHS AND MARRIAGES. The chief executive officer, police judges, justices of the peace and judges of small claims court may administer oaths and solemnize marriages.

SECTION 47A-3-508. VACANCIES IN ELECTIVE OFFICE. (1) Unless otherwise provided, all vacancies in elected offices shall be filled by a majority vote of the whole governing body.

(2) To be eligible for appointment to a vacancy in an elected office, the person appointed must meet all of the requirements for election to the office.

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(3) A person appointed to fill a vacancy shall serve until the next regularly scheduled local election, at which time the remainder of the term shall be filled by election.

SECTION 47A-3-509. SUCCESSION TO GOVERNING BODY IN EMERGENCIES.

(1) In the event that no members of a county governing body are available during or following an enemy attack or natural disaster, then the district judge or judges of the judicial district in which the county is located shall appoint successors to act in place of the unavailable members. If the judge or judges of the judicial district in which the vacancy occurs are not available to make the appointment, then the district judges of all other judicial districts shall be authorized to make such appointment; however, of the available judges in the state of Montana, that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

(2) In the event that no members of a municipal governing body are available following an enemy attack or natural disaster, then the county governing body of the county in which the municipality is located shall appoint successors to act in place of the unavailable members.

Source: Section 509 is section 82-3803 and 82-3804 in current law.

SECTION 47A-3-510. SUCCESSION FOR LOCAL GOVERNMENT EXECUTIVES IN EMERGENCIES. (1) In the event that the executive head of any local government is unavailable to exercise the powers and discharge the duties of his office, following an enemy attack, then those members of the local government's governing body available shall by majority vote choose a successor to act as chief executive head of the local government.

Source: Section 510 (1) is section 82-3805 in current law.

(2) Following an enemy attack or natural disaster in which the seat of local government, in the opinion of the governing body of that local government, shall have been rendered unsuitable for use in that capacity, the seat of government may be moved by the governing body to another location they consider most suitable.

Source: Section 510 (2) is section 82-3808 in current law.

SECTION 47A-3-511. PROVISION FOR QUORUM IN EMERGENCIES. If, following an enemy attack or natural disaster, any local governing body is unable to assemble a quorum as defined by statute, then those members of the governing body available for duty shall constitute a quorum; the quorum requirements shall be suspended and where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

Source: Section 511 includes those parts of current section 82-3806 applicable to local government.

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PART 3, CHAPTER 6

ELECTIONS

SECTION 47A-3-601. OFFICERS OF LOCAL GOVERNMENT. (1) The elected officers of a local government are those officers specified in the plan of government adopted by the local government.

(2) The term of each elected local government office shall be the term specified in the plan of government adopted by the local government.

(3) If the plan of government adopted by a local government requires the nomination or election of members of the governing body by districts, the governing body shall, by ordinance, after each federal decennial census, and may at any time, make adjustments in the boundaries of the districts as are necessary to make the districts as nearly equal in population as possible. A copy of the ordinance shall be filed with the elections administrator.

SECTION 47A-3-602. ELECTIONS REQUIRED. (1) A local government shall hold an election at which officers are elected to those offices for which the terms of the incumbents expire in any year in which one (1) or more terms of office expire.

(2) Local governments [municipalities] shall hold their general elections on the first Tuesday in April in any year in which an election is required.

[(3) Counties shall hold their general elections on the first Tuesday after the first Monday in November in any year in which an election is required.]

(4) Primary elections shall be held and certificates of nomination filed as provided in Title 23.

(5) Local government [municipal] officers shall begin their duties the first Monday in May following their election. [County officers shall begin their duties on the first Monday in January following their election except that a finance administrator shall not take office until the first Monday in March following his election.]

SECTION 47A-3-603. QUALIFICATION OF LOCAL GOVERNMENT OFFICIAL.

(1) A person is eligible to local government elective office except as provided in this section if he is a resident and an elector of the local government and if he meets the district residence requirements, if any, imposed by the local government for the office.

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(2) In addition to the requirement established by subsection (1), to be eligible for the office of legal officer a person must be admitted to practice law in Montana.

SECTION 47A-3-604. QUALIFICATIONS OF LOCAL GOVERNMENT ELECTORS.

(1) Any person who has registered as an elector as provided in Title 23 is an elector of the local government of which he is a resident.

(2) As provided in Title 23, the elections administrator shall supply a municipality with precinct registers prior to any municipal election unless informed as provided in Title 23 that precinct registers are not needed.

(3) When it is necessary to determine the number of electors of a local government for any purpose, including petitions, the number of electors qualified to vote at the last preceding general election shall be considered the number of electors.

SECTION 47A-3-605. PRECINCTS-DISTRICTS-POLLING PLACES. (1)

The county governing body shall establish election precincts as provided in Title 23, chapter 31.

(2) The county governing body shall designate one (1) or more polling places for each precinct for all general or county elections. The municipal governing body shall designate polling places for all municipal elections.

(3) When members of the governing body are to be nominated or elected by districts, there shall be at least one (1) polling place within each district, except that in municipalities with a population of less than one thousand five hundred (1,500) as determined by the most recent official census, the governing body may provide by ordinance for a single polling place.

SECTION 47A-3-606. ELECTION PROCEDURES FOR GENERAL ELECTIONS.

(1) All local government elections shall be conducted as provided in Title 23 for general elections.

(2) The governing body of each local government shall designate an officer or employee to perform the function of registrar as provided in Title 23. The person designated shall be the elections administrator.

(3) (a) The results of a municipal election shall be conducted, canvassed, and returned by the municipal governing body or the municipal elections administrator as provided in Title 23, chapter 40, for general elections.

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(b) Certification of election shall be delivered by the municipal elections administrator to those persons elected as provided in section 23-40414.

(4) The results of a county election shall be conducted, canvassed, and returned as provided in Title 23 for general elections.

(5) All local government elections administrators shall file the results of local government elections with the department of community affairs, and the elections administrator of each municipality shall also file the results of municipal elections with the county elections administrator of the county.

SECTION 47A-3-607. (1) ELECTION PROCEDURES FOR QUESTIONS SUBMITTED TO THE ELECTORS. (1) Elections on questions submitted to the electors may be held at a special election called for that purpose or may be held with any school, primary, general, or other election.

(2) Elections on questions submitted to the electors shall be conducted, canvassed, and returned in the manner provided in Title 23 and this chapter for general elections; however, of the questions are submitted to the electors at any school, primary, general, or other election, the question must be polled separately and separate returns must be made.

(3) Unless otherwise provided, the affirmative vote of a majority of those voting on the question shall be required for adoption.

(4) If the question is submitted at a general election or primary, the polls shall be kept open during the same hours as are fixed for the general election, and the judges and clerks for the general election shall act as the judges and clerks for the bond election.

(5) If the question is submitted at a special election called for that purpose, the governing body shall fix the hours through which the polls are to be kept open. The polls shall be open for at least eight (8) hours. The governing body may appoint a smaller number of election judges than is required for a general election, but in no case shall there be less than three (3) judges in each precinct. Judges shall act as their own clerks.

(6) If the question is submitted at a special election, the governing body shall meet within ten (10) days after the date of holding the special election and canvass the returns.

SECTION 47A-3-608. BOND ELECTION PROCEDURES. (1) As provided in section 47A-9-510, a local government must submit to the electors at a regular or special election, all proposed general obligation bond authorizations.

(2) General obligation bond elections shall be conducted, canvassed, and returned in the manner provided in 47A-3-607.

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(3) Any elector of the local government may note in the general obligation bond election.

(4) Before a general obligation bond issue election, the governing body shall give notice, which shall include:

(a) the date of the election;

(b) the hours of the election;

(c) the amount and purpose of the proposed bond issue;

(d) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the local government;

(e) the estimated cost of debt service for the next year if the bond issue is not approved, and the estimated cost if the bond issue is approved; and

(f) other information as the governing body may determine necessary.

(5) (a) Upon the adoption of the resolution calling for a special election and filing of the resolution with the election administrator, the administrator must cause to be published notice, stating that registration for the bond election will close at noon of the fifteenth (15th) day prior to the date for holding the election and at that time the registration books shall be closed for the election. The notice must be published at least ten (10) days prior to the day when the registration books will be closed.

(b) After the closing of the registration books for the election, the election administrator shall promptly prepare lists of the registered electors of the voting precincts who are entitled to vote at the election, and shall prepare precinct registers as provided in section 23-3012 and deliver them to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post the list of electors.

(6) If the general obligation bond election is held at a regular local government election, the votes must be polled in the manner provided in 47A-3-607(2). If the general obligation bond election is held at a special election called for that purpose, the governing body shall meet within ten (10) days after the date of the election and canvass the returns.

SECTION 47A-3-609. ELECTIONS SUBMITTED TO ELECTORS WITHIN DISTRICTS. [to be drafted].

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SECTION 47A-3-610. RESERVATION OF POWER. (1) The powers of initiative and referendum are reserved to the electors of each local government. Ordinances within the legislative jurisdiction and power of the governing body of the local government. Ordinances within the local government, except those set out in part (2) of this section, may be proposed or amended and prior ordinances may be repealed in the manner provided in this act.

(2) The powers of initiative and referendum shall not extend to tax levies or general appropriation resolutions providing for the ordinary and current expenses of the local government.

(3) The people may initiate ordinances and require submission of existing ordinances to a vote of the people by petition.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

SECTION 47A-3-611. PETITION OR RESOLUTION. (1) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject; and

(b) set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referenda set out the ordinance sought to be repealed.

(2) Initiative and referendum petitions shall be filed with the elections officer of the local government who shall determine the adequacy of the signatures thereto.

(3) The elections officer shall present all petitions bearing sufficient proper signatures to the governing body at its next regular meeting.

SECTION 47A-3-612. ACTION BY THE GOVERNING BODY. (1) The governing body may, within sixty (60) days of receiving the petition, take the action called for in the petition. If the action is taken the question need not be submitted to the electors.

(2) If the governing body does not, within sixty (60) days, take the proposed action, then the question shall be submitted to the electors. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(3) The complaint shall name as defendants not less than ten (10) nor more than twenty (20) of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words, "and all petitioners whose names appear on the petition for an ordinance filed on the _____ day of _____, in the year _____", stating the date of filing. The summons shall be similarly directed and shall be

and shall be served on the defendants named therein, and in addition shall be published at least once, at the expense of the local government.

(4) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government the governing body may not for two (2) years, reenact or repeal the ordinance. If during the two (2) year period, the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a re-enactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a re-enactment of an ordinance repealed pursuant to referendum of the electors.

SECTION 47A-3-613. ELECTION. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least twenty-five per cent (25%) of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) Whenever a measure is ready for submission to the electors, the elections administrator shall, in writing, notify the governing body, which shall publish the date of the election and the ordinance which is to be proposed or amended. In the case of referendum, the governing body shall publish the ordinance sought to be repealed.

(3) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

(4) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared.

SECTION 47A-3-614. RECALL. The holder of any elective office in a local government may be removed at any time by the electors of that local government in the manner provided in this chapter.

SECTION 47A-3-615. PETITION REQUIRED. A petition to remove any incumbent officer must be filed. The petition shall:

(1) demand an election for recall of the officer sought to be recalled;

(2) contain a statement of general grounds for which the recall is being sought;

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(3) be signed and dated by at least twenty-five percent (25%) of the electors of the local government, who shall also signify their places of residence; and

(4) contain a sworn statement by one (1) petitioner who shall swear, before an officer competent to administer oaths, that he believes the contained statements to be true and the signatures on the petition to be genuine.

SECTION 47A-3-616. ELECTION CALLED. (1) The governing body shall, upon the reception of a petition, order and fix a date for an election on the question, not less than seventy (70) nor more than eighty (80) days from the date the clerk certified the petition as adequate.

(2) Within five (5) days of fixing the election date, the governing body shall publish the purpose of the election, the reasons stated in the petition for recall, and the date of the election.

SECTION 47A-3-617. CONDUCT OF ELECTION. (1) The election shall be conducted as provided in Title 23.

(2) A recall ballot shall contain:

(a) the grounds stated in the recall petition;

(b) the officer's statement of two hundred (200) words or less if the statement is filed with the clerk for publication and public inspection within twenty (20) days before the election; and

(c) a question stating: "Shall (name of person) be recalled from the office of (office)? Yes ☐ No ☐".

(3) If a majority of those electors voting on the question favor the recall of the officer, the recall shall take place immediately upon official declaration of the election results.

SECTION 47A-3-618. VACANCIES. Any vacancy created as a result of a recall election shall be filled in the same manner as any other vacancy in the same office.

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PART 4

ADMINISTRATIVE PROVISIONS

PART 4, CHAPTER 1

WAGES AND BENEFITS

SECTION 47A-4-101. SALARIES. (1) The salaries of local government officers and employees shall be set by the governing body of the local government.

(2) The salaries of elected local officers shall be set by ordinance and may not be reduced during an officer's term.

(3) All other salaries may be set by resolution or the governing body may by ordinance authorize the chief executive or administrative officer to set salaries.

Source: New

SECTION 47A-4-102. LEAVE WITH PAY. (1) Each full time employee of the local government shall earn vacation leave and sick leave credits from the first full pay period of employment.

(2) (a) For the purpose of calculating leave credits, two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one year.

(b) Permanent part time employees are entitled to prorated leave credits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period.

(3) Vacation leave credits shall be earned in accordance with the following table, except that employees may not use vacation leave until they have worked for six (6) qualifying months:

(a) from one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;

(b) after ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

(c) after fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service; and

(d) after twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

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(4) Sick leave credits shall be earned at the rate of twelve (12) working days per year, except an employee is not entitled to sick leave until the completion of ninety (90) days of continuous employment.

(5) Leave shall not accrue during a leave of absence without pay which exceeds fifteen (15) days.

SECTION 47A-4-103. ACCUMULATION OF LEAVE. (1) Vacation leave may be accumulated to a total not to exceed two (2) times the maximum number of days earned annually as of the last day of any calendar year.

(2) Sick leave may be accumulated without limit.

SECTION 47A-4-104. SEPARATION FROM SERVICE. An employee who terminates his service with a local government shall be entitled upon the date of the termination to cash compensation for unused leave equal to the full value of unused vacation leave and twenty-five per cent (25%) of the value of unused sick leave.

SECTION 47A-4-105. HOLIDAYS. The following are local government holidays:

- (1) each Sunday;
- (2) New Year's Day, January 1;
- (3) Lincoln's birthday, February 12;
- (4) Washington's birthday, the third Monday in February;
- (5) Memorial Day, the last Monday in May;
- (6) Independence Day, July 4;
- (7) Labor Day, the first Monday in September;
- (8) Columbus Day, the second Monday in October;
- (9) Veterans' Day, November 11;
- (10) Thanksgiving Day, the fourth Thursday in November;
- (11) Christmas Day, December 25;
- (12) State general election day; and

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(13) Other days which are declared holidays by the governor or the local government's chief executive officer.

Source: Section 19-107

SECTION 47A-4-106. OBSERVANCE OF HOLIDAY FALLING ON AN EMPLOYEE'S DAY OFF. Any employee of a local government who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

SECTION 47A-4-107. JURY DUTY - SERVICE AS WITNESS. (1) Each employee of a local government who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense of mileage allowance paid by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a local government.

(4) The administrative office of any local government may issue regulations necessary to implement this act.

SECTION 47A-4-108. SOCIAL SECURITY. A local government shall proceed as provided in Title 59, chapter 11 to extend coverage of the Federal Social Security Act to their employees.

SECTION 47A-4-109. WORKER'S COMPENSATION. (1) A local government shall provide worker's compensation coverage for its employees.

(2) A local government may elect to provide coverage under any of the plans authorized by Title 92 (worker's compensation), and shall be subject to the same requirements, rules, and regulations as any other employer.

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(3) Any sums required to be paid to provide the coverage shall be considered ordinary and necessary expenses of the local government. The amounts required shall be appropriated and paid by the governing body.

(4) Whenever any local government neglects or refuses to file with the industrial accident board a monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon the local government in an amount of twenty-five dollars (\$25) for each assessment, to be collected in the manner provided in Title 92 for the collection of assessments.

SECTION 47A-4-110. UNEMPLOYMENT COMPENSATION. (1) A local government is subject to all the obligations of a public employer established by Title 87 (unemployment compensation).

(2) Any sums required for compliance with Title 87 shall be considered ordinary and necessary expenses of the local government and shall be appropriated and paid by the governing body of the local government.

SECTION 47A-4-111. PUBLIC PENSIONS. (1) Any local government may contract with the public employee's retirement system as provided in section for all employees not covered by another pension system. All existing contracts between the public employee's retirement system and a local government shall continue in force until modified or rescinded as provided in section .

(2) All municipal law enforcement officers and employees shall be entitled to participate in the police reserve system established by chapter of Title .

(3) All county law enforcement officers and employees shall be entitled to participate in the sheriff's retirement system established by chapter of Title .

(4) All full time firefighting employees shall be entitled to participate in the firefighters relief disability fund established by chapter of Title .

(5) All volunteer firefighters shall be entitled to the pension benefits established by chapter of Title .

SECTION 47A-4-112. GROUP INSURANCE FOR LOCAL GOVERNMENT OFFICERS AND EMPLOYEES. (1) A local government shall, upon approval by two-thirds (2/3) vote of the officers and employees of the local government, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of the officers, employees, and their dependents.

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(2) The local government shall pay ten dollars (\$10) per month or one hundred and twenty dollars (\$120) per year for the insurance for each officer. For local government employees, the local government's premium contribution may exceed but shall not be less than the amount specified for officers in this section.

SECTION 47A-4-113. GROUP INSURANCE FOR FULL-TIME FIREFIGHTERS AND POLICE OFFICERS - PAYMENT OF PREMIUM. A local government, if it provides insurance for other local government employees under 47A-4-112 shall:

(a) provide the same insurance to its full-time firefighters and police officers; and

(b) pay the full insurance premium of each full-time firefighter and police officer.

SECTION 47A-4-114. DEFERRED COMPENSATION PROGRAM. In accordance with the provisions and procedures of Title 68, chapter 27, any local government may establish, after reaching agreement with any employee or the employee's representative if one has been designated or certified, a program for the employee to defer any portion of that employee's compensation, up to the maximum allowed by the internal revenue code in a plan qualified for exemption under applicable sections of the internal revenue code.

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PART 4, CHAPTER 2

PERSONNEL SYSTEM

SECTION 47A-4-201. EMPLOYMENT. (1) All appointments and promotions of local government employees shall be made on the basis of merit.

(2) Appointment, removal, and promotion of local government officers and employees shall be made without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(3) All employees shall be hired as provided in the form of government or charter. Unless prohibited, elected officials may employ subordinates in the number and at the salary authorized by the governing body.

SECTION 47A-4-202. NEPOTISM PROHIBITED. (1) Nepotism is the bestowal of political patronage by reason of relationships rather than merit.

(2) No local government officer, employee, board, commission, or governing body may appoint to any position of trust or compensation any person who is related to him or any of them by consanguinity within the fourth degree or affinity within the second degree. This section shall not apply to sheriffs in the appointment of cooks or matrons.

(3) Any person who knowingly or purposefully violates this section is guilty of a misdemeanor.

Source: Sections 59-518 to 59-520.

SECTION 47A-4-203. POLITICAL ACTIVITY. (1) No person may attempt to coerce, command, or require a local government employee to influence or give money, service, or other things of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(2) No local government employee may solicit any money, influence, service, or other things of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. Nothing in this section is intended to restrict the right of a local government employee to express his personal political views.

(3) Any person who violates subsection (1) of this section shall be fined not to exceed one thousand dollars (\$1,000) or be imprisoned for a term not to exceed ten (10) years. Any person who violates subsection (2) of this section shall be guilty of a misdemeanor. Any violation of this section shall also be punishable by removal from office or discharge from employment.

Source: Section 23-4724.

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SECTION 47A-4-204. COLLECTIVE BARGAINING. (1) In accordance with the provisions of and subject to the restrictions of Title 59, chapter 16 of the Revised Codes of Montana, all employees of a local government shall have the right of self-organization, to form, join, or assist any labor organization, to bargain collectively, and to exercise all other rights granted therein.

(2) A local government as a public employer, shall have all rights and obligations of a public employer as established by Title 59, chapter 16 of the Revised Codes of Montana.

(3) Any general law or charter provision providing for local employment terms and conditions may be modified pursuant to any contract entered into under provisions of the State Public Labor-Management Relations Act.

SECTION 47A-4-205. HOURS OF LABOR. (1) Except as provided in this section, a period of eight (8) hours shall constitute a day's work in all works or undertakings carried on or aided by a local government.

(2) In a county where a regular road and bridge department is maintained, the governing body may, with the approval of the employees or their duly constituted representative, establish a forty (40) hour work week consisting of four (4) consecutive ten (10) hour days. No employee shall be required to work in excess of eight (8) hours in any one work day if they prefer not to.

(3) In a local government with paid firefighters, a work week for paid firefighters shall be a period of not more than forty (40) hours during a five day week.

Source: Section 41-1121

SECTION 47A-4-206. CIVIL SERVICE BOARD. (1) Each local government, with a population of over five thousand (5,000) shall establish a civil service board as provided in this chapter.

(2) A local government with a population of less than five thousand (5,000) may by ordinance establish a civil service board as provided in this chapter.

(3) Local government may establish joint civil service boards.

SECTION 47A-4-207. COMPOSITION OF CIVIL SERVICE BOARD - TERM OF OFFICE - QUALIFICATIONS. (1) The civil service board shall consist of three (3) members appointed in the same manner that the form of government in effect in the local government provides for the appointment of department heads. If the civil service board is a joint board, members shall be appointed by each of the cooperating local governments before taking office.

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(2) At the time the civil service board is established, one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for a term of four (4) years, and one (1) member shall be appointed for a term of six (6) years. Thereafter members shall be appointed for a term of six (6) years.

(3) The governing body may remove any member of the civil service board for cause upon stating in writing the reasons for removal and giving the member an opportunity to be heard. Removal shall require a two thirds (2/3) vote of the whole governing body except when the governing body has only three (3) members in which case the affirmative vote of all three (3) members of the governing body is required for removal.

(4) A member of the civil service board shall be an elector of the local government. In the case of a joint board, a member shall be an elector of at least one of the participating local governments.

(5) Immediately after appointment, the board shall organize by electing one of its members chairman. The board may appoint subordinates as may by appropriation be provided for.

SECTION 47A-4-208. DUTIES OF CIVIL SERVICE BOARD. (1) The civil service board shall examine all applicants for law enforcement positions with the municipality. The examination shall determine whether or not the applicant meets the standards established by the board of crime control and is otherwise qualified to be a member of the local law enforcement force.

(2) The civil service board shall provide each applicant who passes the examination with a certificate of eligibility for employment in local law enforcement. No person may be employed in law enforcement who has not been certified as qualified by the civil service board.

(3) The governing body may by ordinance extend the examining authority of the civil service board to other groups or classes of employees.

(4) The civil service board shall hear appeals of all employees who are discharged, suspended, or demoted as provided in the following section.

SECTION 47A-4-209. DISCHARGE, SUSPENSION OR DEMOTION. (1) An employee in the classified service who is discharged, suspended, or demoted shall be given, in writing, the specific reasons for the discharge, suspension, or demotion and an opportunity to be heard in his own defense.

(2) Any employee in the classified service aggrieved by his discharge, suspension, or demotion may, within thirty (30) days after being heard in his own defense or after the refusal of his right to be heard, appeal to the civil service board. The appeal shall be in the form prescribed by the board.

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(3) Upon receipt of an appeal, the board shall set a time and place for a hearing on the issue. The board shall give reasonable notice of the time and place set for the hearing to the parties.

(4) At the hearing the board shall:

(a) keep a record including:

(i) all pleadings, motions, intermediate rulings;

(ii) all evidence received or considered, including a stenographic or mechanical record of oral proceedings when demanded by a party;

(iii) a statement of matters officially noticed;

(iv) questions and offers of proof, objections, and rulings thereon; and

(v) proposed findings and exceptions.

(b) accept evidence in substantial compliance with statutory and common law rules of evidence.

(5) Following the hearing, the board shall give a written decision on all issues before it, setting out in detail the facts relied on.

(6) Appeal from a decision of the board shall be by writ of certiorari in the district court.

SECTION 47A-4-210. PROBATIONARY PERIOD. The governing body may, by ordinance, provide for a probationary period of not more than one (1) year following appointment or promotion during which a new employee may be discharged or a promoted employee demoted to his old rank without a hearing.

SECTION 47A-4-211. REDUCTION IN FORCE. (1) The governing body shall have absolute and exclusive authority to determine and limit the number of local government employees in each department and may at any time reduce the number of employees.

(2) An employee released because of the reduction in the number of employees shall be given preference according to seniority when positions become available with the local government.

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PART 4, CHAPTER 3

OFFICIAL BONDS

SECTION 47A-4-301. PURCHASE OF SURETY BONDS BY LOCAL GOVERNMENT GOVERNING BODY. The governing body of a local government shall purchase all surety bonds for local government officers and employees. A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees, or any group or combination of officers and employees.

Source: Sections 6-203 and 6-601.

SECTION 47A-4-302. BONDING OF ELECTED OR APPOINTED LOCAL GOVERNMENT OFFICERS AND EMPLOYEES--AMOUNT OF BOND--SOLICITING OF OFFERS. All elected or appointed local government officers and employees shall be bonded in sums as ordinance may require. The amount for which a local government officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. The local government governing body shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

Source: Sections 6-204 and 6-602.

SECTION 47A-4-303. PREMIUMS--CHARGE AGAINST BUDGET. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the local government general fund, or against the budget or budgets of those local government funds where the officer or employee renders service.

Source: Sections 6-207 and 6-607.

SECTION 47A-4-304. APPROVAL OF BOND BY LOCAL GOVERNMENT LEGAL OFFICE--FILING. The form of bonds for local government officers and employees must be approved by the local government legal officer and filed and recorded in the office of the local government clerk or local government legal officer.

Source: Sections 6-208 and 6-605.

SECTION 47A-4-305. COMPANIES PERMITTED TO EXECUTE BONDS. Bonds purchased by the local government governing body shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

Source: Sections 6-206 and 6-604.

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SECTION 47A-4-306. CONDITIONS--SIGNATURES AND SURETIES. (1) The condition of every official bond must be that the covered officers and employees shall perform all official duties required of them by law, and also such additional duties as may be imposed on them by any law of the state subsequently enacted; and that they will account for and pay over and deliver to the person or officer entitled to receive the same all monies or other property that may come into their hands as such officers or employees. The sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee, appointed or employed by a covered officer or employee.

(2) All official bonds must be signed and executed by the chairperson of the local government governing body and one or more surety companies organized under the laws of this state, or licensed to do business herein.

Source: Section 6-209, 6-306 and 6-606.

SECTION 47A-4-307. DETERMINATION OF ADEQUACY OF BOND BY DEPARTMENT OF COMMUNITY AFFAIRS. The amount for which any local government officer or employee or group of officers or employees shall be bonded shall be subject to the supervision of the department of community affairs. If the department of community affairs determines that the amount of the bond is inadequate, it may require the local government governing body to purchase an adequate bond.

Source: Section 6-205 and 6-603.

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PART 4, CHAPTER 4

CODE OF ETHICS

SECTION 47A-4-401. STATEMENT OF PURPOSE. The purpose of this chapter is to establish a code of ethics for local government officers and employees as required by Article XIII, section 4 of the Montana constitution.

SECTION 47A-4-402. DEFINITIONS. As used in this chapter:

(1) "Business" means any corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization conducting activity whether or not the activity is for profit.

(2) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare such person is interested, but not an advantage promised generally to a group or class of voters as a consequence of a public measure which a candidate engages to support or oppose.

(3) "Employee" means any temporary or permanent employee of a local government, including members of boards and committees, and employees under contract, but excluding elected officers.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is.

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment, or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any elected officer of any local government.

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SECTION 47A-4-403. PUBLIC TRUST. (1) The holding of public office or employment is a public trust created by the confidence which the electorate reposes in the integrity of public officers and employees. A public officer or employee shall carry out his duties for the benefit of the people of the local government. The officer or employee may not use his office, the influence created by his official position, or the inside information gained by virtue of that position, to advance any of his own, his relative's, or his associate's personal economic interests, other than advancing strictly incidental benefits as may accrue to any of them from the enactment or administration of laws affecting the public generally.

(2) A public officer or employee whose conduct departs from his fiduciary duty under this section is liable to the people of the local government as a trustee of property is liable to the beneficiary under section 86-310, and shall suffer other liabilities as a private fiduciary would suffer for abuse of his trust. The attorney of the local government where the trust is violated may bring any appropriate judicial proceedings on behalf of the local government. Any accounting collected in the actions shall be paid to the general fund of the local government.

(3) This section sets forth the fundamental standard of conduct for all public officers and employees. The following sections set forth various rules of conduct, the transgression of any of which is a violation of this standard, and various ethical principles, the transgression of which may, in some cases, contribute to a violation of this standard. The enumeration of prohibited acts and cautioned acts does not exculpate an act not thus enumerated if that act amounts to a breach of fiduciary duty.

SECTION 47A-4-404. RULES OF CONDUCT FOR PUBLIC OFFICERS AND EMPLOYEES. Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer or employee may not:

(1) accept a gift, or accept an economic benefit tantamount to a gift, under circumstances from which it can reasonably be inferred that a major purpose of the gift is to influence him in the performance of his official duties or to reward him for official action he has taken.

An economic benefit tantamount to a gift includes, without limitation, a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans, and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts;

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(2) disclose or use confidential information acquired in the course of his official duties in order to further his personal economic interests;

(3) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(4) perform an official act directly affecting a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, but he must make a full voluntary disclosure of his interest to the governing body at a public meeting and file a written statement setting out his interest with the clerk of the local government prior to the taking of action by the governing body.

SECTION 47A-4-405. ETHICAL PRINCIPLES FOR ALL PUBLIC OFFICERS AND EMPLOYEES. The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in local government. However, failure to observe one of these principles may be taken as evidence tending to establish, in conjunction with all the other facts of a case, a breach of fiduciary duty.

(1) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly affected to its economic benefit by official action to be taken by the local government.

(2) A public officer or employee should not, within the twelve (12) months following the termination of his office or employment, assist or represent any person for a fee or other consideration in connection with certain matters with which he was directly involved during his term or employment. These matters include legislation or rules which he actively helped to formulate, and applications, claims, or contested cases in the consideration of which he was an active participant.

(3) A public officer, legislator, or employee should not perform an official act directly affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

SECTION 47A-4-406. REMOVAL FROM OFFICE. (1) Any citizen of a local government or the prosecutor of the county in which the local government is located may bring an action in district court to remove from office any officer or employee who has violated the rules of conduct set out in section 47A-4-404.

(2) If the court finds that the officer or employee has violated the rules of conduct, it shall order him removed from office or dismissed from employment.

(3) If the action is brought by a citizen, the court may award reasonable attorney's fees.

PART 4, CHAPTER 5
PUBLIC MEETINGS AND RECORDS

SECTION 47A-4-501. PURPOSE. It is the purpose of this chapter to assure the people of Montana of their constitutionally guaranteed rights to participate in and to know of the operation of their local government. Toward these ends, the provisions of this chapter shall be liberally construed.

SECTION 47A-4-502. PUBLIC MEETING REQUIRED. (1) All meetings of local government governing bodies, boards, committees, or any other entity created by or subordinate to a local government shall be open to the public except as provided in the next section.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available to the public for inspection and copying.

SECTION 47A-4-503. EXCEPTIONS. A meeting or that part of a meeting which involves or affects the following need not be open to the public;

(1) the employment, appointment, promotion, demotion, disciplining, dismissal or resignation of a local government official or employee, unless the local government officer or employee requests a public meeting;

(2) the revocation of any license granted by the local government, unless the person licensed requests a public meeting; or

(3) the purchase or sale of public property, the investing of public funds or other matters involving competition or bargaining which, if made public, may adversely affect the financial interest of the local government.

SECTION 47A-4-504. PARTICIPATION. In any meeting required to be open to the public, the local government shall adopt rules for conducting the meeting affording citizens a reasonable opportunity to participate prior to the final decision.

SECTION 47A-4-505. PUBLIC RECORDS. (1) Except as provided in subsection (2), all records and other written materials in the possession of a local government shall be available for inspection and copying by any person during normal office hours.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public, unless the person they concern requests they be made public.

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SECTION 47A-4-506. DESTRUCTION OF OLD RECORDS. (1) Any local government officer or employee may destroy old worthless reports, papers, or records in his office that have served their purpose and are substantiated by permanent records. Upon the order of the local government governing body, and with the approval of the department of community affairs.

(2) Termination statements filed under the Uniform Commercial Code--Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code--Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of this period all such statements may be destroyed.

(3) Any claim, warrant, voucher, bond or treasurer's general receipt may be destroyed by a local government after twenty-five (25) years have elapsed.

Comment:

Section 47A-4-501 reiterates the constitutional basis for the public's right to know and participate. (See Art. II, sections 8 and 9, Mont. const., 1972).

Sections 47A-4-502 and 503 implement Art. II, sec. 9, Mont. const., 1972, by providing that all meetings are open with exception of those in which considerations of individual privacy predominate. Section 47A-4-504 further implements Art. II, sec. 8, Mont. const., 1972 by directing local governments to establish rules for the conduct of public meetings which allow for citizen participation. These sections replace the local government provisions contained in sections 82-3401 to 82-3403.

Sections 47A-4-505 and 506 protect the right to know assured by Art. II, sec. 9, Mont. const., 1972 while allowing for the destruction of outdated or useless materials. These sections replace the local government provisions in sections 59-512, 59-514(1), and 59-516 and all of sections 59-515 and 59-516.1.

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PART 5

POWERS OF GENERAL POWER LOCAL GOVERNMENTS



PART 5, CHAPTER 1

GENERAL GOVERNMENT CORPORATE POWERS

SECTION 47A-5-101. LOCAL GOVERNMENT A CORPORATE BODY. A local government with general government powers is a body politic and corporate and as such shall have a corporate name and perpetual succession.

SECTION 47A-5-102. DISTRIBUTION OF POWERS. (1) Local governments have legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the local government.

(3) Executive powers are vested as provided in the form of government adopted by the local government.

(4) The judicial powers of a county are vested in the justice court, and the judicial powers of a municipality are vested in the municipal court.

SECTION 47A-5-103. CORPORATE POWERS. A local government with general powers has the power subject to provisions of this title:

(1) to sue and be sued;

(2) to buy, sell, lease, hold, and dispose of any interest in real and personal property;

(3) to contract with persons, corporations, or any other governmental entity;

(4) to pay debts and expenses;

(5) to borrow money;

(6) to accept bequests, donations or grants of money, property, services, or other advantages;

(7) to make grants and loans of money, property, services, or other advantages;

(8) to require the attendance of witness and production of documents relevant to matters being considered by the local government's governing body;

(9) to punish contempt and disorder in the governing body's chambers;

(10) to hire, direct, and discharge employees;

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(11) to ratify any action of the local government or its officers which could have been approved in advance;

(12) to have a corporate seal;

(13) to execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or from any other source;

(14) to acquire any interest in property by eminent domain as provided in Title 93, chapter 99; and

(15) to initiate a civil action to restrain (or enjoin) violation of an ordinance; and

(16) to conduct a census.

SECTION 47A-5-104. MEMBERSHIP IN ORGANIZATIONS. (1) The governing body of a local government may join, pay dues and assessments, and cooperate with organizations and associations of local governments of this state and other states for the advancement of good government and the protection of local government interests.

(2) Elected officials of a local government shall be allowed actual transportation expenses and per diem for attendance at meetings of the appropriate association of local government officials; reasonable expenses or charges against each local government, as a member of the association, shall be paid by the local government.

(3) Employees of a local government may be allowed actual and necessary expenses or mileage and per diem for attendance at meetings of professional organizations or associations and may pay membership fees and service charges to the organizations.

SECTION 47A-5-105. FRANCHISES. (1) A local government may grant a franchise for a term not to exceed twenty-five (25) years. The franchise may be granted, amended, extended, or renewed only by ordinance.

(2) No ordinance granting, amending, extending, or renewing a franchise shall be effective until approved by the qualified electors of the local government granting the franchise.

(3) The question of granting, amending, extending, or renewing a franchise shall be submitted to the electors in the same manner as other questions are submitted to the electors.

(4) An ordinance granting a franchise shall state:

(a) the duration of the franchise;

(b) the rights of franchisee and conditions thereon; and

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(c) the amount to be paid for the franchise or the method by which the amount to be paid is to be calculated.

(5) Utilities regulated by the public service commission have the right to use the streets and other public ways of a local government upon payment of a reasonable permit fee and subject to reasonable terms and conditions with reasonable exceptions as determined by the governing body of the local government. A dispute as to whether the fees, terms, conditions, or exceptions are reasonable shall be decided by the public service commission.

Source: Sections 11-1206 et seq. and 16-114
Alaska AS 2948.050 Iowa Housefile 574, Section 11

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PART 5, CHAPTER 2

GENERAL GOVERNMENT GOVERNMENTAL POWERS

SECTION 47A-5-201. LEGISLATIVE POWERS. A local government with general powers has the legislative power subject to the provisions of this title to adopt, amend, and repeal ordinances and resolutions required to:

- (1) preserve peace and order and secure freedom from dangerous or noxious activities;
- (2) secure and promote the general public health and welfare;
- (3) provide any service or perform any function authorized by this title;
- (4) exercise any power granted by this title;
- (5) levy any tax authorized by this title;
- (6) appropriate public funds;
- (7) impose an assessment reasonably related to the cost of any special service or special benefit provided by the local government or impose a fee for the provision of a service; and
- (8) provide for its own organization and the management of its affairs.

SECTION 47A-5-202. CONCURRENT POWERS. (1) If a local government is authorized to regulate an area which the state by statute or administrative regulation also regulates, the local government may regulate the area only by enacting ordinances which are consistent with state law or administrative regulation.

(2) If state statute or administrative regulation prescribes a single standard of conduct, an ordinance is consistent if it is identical to the state statute or administrative regulation.

(3) If state statute or administrative regulation prescribes a minimal standard of conduct, an ordinance is consistent if it establishes a standard which is the same as, or higher, or more stringent than the state standard.

(4) A local government may adopt ordinances which incorporate by reference state statutes and administrative regulations in areas in which a local government is authorized to act.

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SECTION 47A-5-203. ADOPTION AND AMENDMENT OF CODES BY REFERENCE. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. At least one (1) copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk for a period of ninety (90) days prior to the adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) In a local government that has adopted codes by reference pursuant to subsection (1), the chief administrative officer may adopt administrative regulations which incorporate by reference subsequent changes and amendments thereof, properly identified as to date and source, that have been adopted by the agency or association which promulgated the code if the chief administrative officer finds that the changes and amendments conform to nationally recognized standards, accepted engineering practices, or state and national model codes.

(3) Any administrative regulations which incorporate code amendments by reference shall become effective upon the expiration of sixty (60) calendar days or after the fourth official meeting of the governing body following the promulgation of the regulation, whichever is later, unless within that period of time a resolution disapproving the administrative regulation shall have been adopted by the governing body.

(4) In addition to complying with all requirements for the issuance of administrative regulations by the chief administrative officer, the filing requirement of subsection (1) of this section shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment, or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof; and shall include specifically, but shall not be limited to: building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

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SECTION 47A-5-204. PENALTY FOR VIOLATION OF ORDINANCE. A local government with general government powers may fix penalties for the violation of an ordinance which do not exceed a fine of five hundred dollars (\$500) or six (6) months imprisonment or both the fine and imprisonment.

SECTION 47A-5-205. INTERLOCAL AGREEMENTS. (1) Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform.

(2) In addition, and unless specifically prohibited by law or charter, a local government may contract with one (1) or more other local governments, school districts, the state, or the United States to:

(a) cooperate in the exercise of any function, power, or responsibility;

(b) share the services of any officer, employee or facilities; or

(c) transfer or delegate any function, power, responsibility or duty of any officer.

(3) An interlocal agreement contract shall be authorized and approved by the governing body of each party to the contract, shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, and shall specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created;

(c) the purpose or purposes of the interlocal contract;

(d) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;

(e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board; and

(g) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(h) any other necessary and proper matters.

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4) Every agreement made hereunder shall, prior to and as a condition precedent to its performance, be submitted to the department of community affairs which shall determine whether the agreement is in proper form and compatible with the laws of the state of Montana. The department shall approve any agreement submitted to it hereunder unless it finds it does not meet the conditions set forth in this section and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval.

(5) Within ten (10) days after the approval by the department of community affairs, and prior to commencement of performance, the interlocal contract shall be filed with the county records administrator of the county or counties where the political agencies are located and with the secretary of state and department of community affairs.

(6) Any public agency entering into an interlocal contract pursuant to this act may appropriate funds for and may sell, lease, or otherwise give or supply property to the administrative board created by the contract and may provide personnel or services as may be within its legal power.

SECTION 47A-5-206. CONSOLIDATION OF OFFICES. (1) The governing body of a county may, by ordinance, combine any two (2) or more elected offices into a single office.

(2) Municipal governing bodies in municipalities with a population of 1,000 or less may, by ordinance, consolidate the offices of municipal clerk and municipal treasurer.

(3) The governing body may adopt an ordinance consolidating elected offices only after notice and a public hearing on the proposed ordinance.

(4) The ordinance consolidating elected offices shall not be effective until the expiration of the existing office holder's terms or until a vacancy occurs in the offices.

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PART 6

SERVICES OF GENERAL POWER LOCAL GOVERNMENTS

PART 6, CHAPTER 1
GENERAL SERVICE AUTHORIZATION

SECTION 47A-6-101. AUTHORIZED LOCAL GOVERNMENT SERVICES AND FACILITIES. A local government may exercise the powers necessary to provide the following services and facilities:

- (1) agriculture and home economic extension services and facilities;
- (2) livestock and inspection protection services and facilities;
- (3) fairs, exhibitions, and shows services and facilities;
- (4) weed, insect, rodent, and predator control services and facilities;
- (5) police protection, jails, and juvenile detention services and facilities;
- (6) fire protection services and facilities;
- (7) nursing and extended care services and facilities;
- (8) health, hospital, and ambulance services and facilities;
- (9) transportation services and facilities;
- (10) water course and flood control services and facilities;
- (11) community, child care, youth, and senior citizen centers;
- (12) social and rehabilitative services and facilities;
- (13) libraries, museums, civic center auditoriums, theatres, art galleries, and historic, cultural, or natural site services and facilities;
- (14) animal control services and facilities;
- (15) water supply and distribution services and facilities;
- (16) sanitary and storm sewers and sewage treatment services and facilities;
- (17) solid waste collection and disposal services and facilities;
- (18) parking services and facilities;

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(19) housing and urban renewal, rehabilitation and development services and facilities;

(20) ferries, wharves, docks, and other marine services and facilities;

(21) public scales and loading and unloading services and facilities;

(22) cemetery and memorial services and facilities;

(23) natural or manufactured gas and electrical services and facilities;

(24) airports and aviation services and facilities;

(25) market and marketing services and facilities;

(26) parks and recreational services and facilities;

(27) streets, roads, sidewalks, curbs, gutters, bridges, malls, bicycle paths, and trails;

(28) musical, theatrical, and other cultural services and facilities;

(29) zoo, aviary, aquarium, and botanical services and facilities;

(30) open spaces;

(31) civil defense services and facilities, as provided in sections _____; and

(32) other services and facilities of a local nature.

SECTION 47A-6-102. REGULATORY POWERS. (1) A local government may regulate:

(a) the operation and use of its public right of ways, public facilities, and services;

(b) subdivision and platting of lands as provided in _____;

(c) zoning as provided in _____;

(d) land use planning and open spaces as provided in _____;

(e) building, housing, electrical, plumbing, and related codes;

(f) naming and numbering of roadways and numbering of houses and lots;

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- (g) demolition and removal of dangerous or damaged structures;
- (h) flood plane construction, water ways, and drainage;
- (i) public accommodations;
- (j) fire prevention and safety, including the storage, possession, and transportation of dangerous or inflammable substances;
- (k) air and water pollution within the standards established by the state;
- (l) open ditches and other nuisances;
- (m) the licensing, impoundment, treatment, and disposition of animals;
- (n) selling of goods;
- (o) selling of food;
- (p) selling of alcoholic beverages as provided in Title 4;
- (q) vehicles, parking, and traffic;
- (r) taxis, and other public transportation systems;
- (s) pawn shops, second hand shops, junk yards, and dumps;
- (t) circuses, prize fights, dances, shows, and other places of amusement;
- (u) cemeteries;
- (v) gambling as provided in Title 62, chapter 7;
- (w) occupations, businesses, and industries; and
- (x) all other activities affecting the general health, safety, well-being, or welfare of its inhabitants.

(2) The governing body may impose regulations on all or a part of its jurisdictional area.

SECTION 47A-6-103. TERRITORIAL AND EXTRATERRITORIAL POWERS.

(1) A municipality may exercise the powers granted by this section only within its territorial limits, except that it may within five (5) miles of its limits:

- (a) provide the services authorized by sections 47A-6-101 (5), (6), (8), (9), (10), (15), (16), (17), (22), (23), (24), (26) (29), (39);
- (b) exercise its regulatory powers authorized by sections 47A-6-102 (1) (a), (b), (c), (f), (j), (k), (l), (r), (s), (t), (u), (x).

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(2) This section shall not be construed to restrict the municipality's authority to enter into interlocal agreements for any purpose.

(3) A county may not exercise any power granted by this section within the jurisdiction of a municipality without concurrence in that exercise by the governing body of the municipality, except that the exercise of power granted by sections 47A-6-101 (1), (2), (3), (4), (21), (31) by a county shall preempt the exercise of those powers by a municipality within the county unless the governing body of the county exempts the municipality from its exercise of the power.

SECTION 47A-6-104. METHODS FOR PROVIDING SERVICES AND FACILITIES. Authorized local government services and facilities may be provided:

- (1) directly by a local government;
- (2) by a local government in cooperation with any state or political subdivision of the state;
- (3) by purchasing the services from a private or public vendor;
- (4) through establishment of subordinate service districts and local improvement districts; and
- (5) through establishment of limited purpose local governments.

SECTION 47A-6-105. ESTABLISHMENT OF SERVICES AND FACILITIES. Services and facilities which will be available to or benefit the local government as a whole may be established in the following ways:

(1) The governing body of a local government may establish the service or facility by ordinance.

(2) If a petition signed by not less than ten percent (10%) of electors requesting the local government to provide the service or facility is presented to the governing body, it shall set a date for a public hearing on the matter and publish notice of the hearing. Following the public hearing, the governing body may either adopt an ordinance authorizing the service or facility or refuse to act further on the matter.

(3) An ordinance authorizing a service or facility may be proposed by initiative as provided in part 3, chapter 6 of this title.

SECTION 47A-6-106. FUNDING JURISDICTION-WIDE SERVICES AND FACILITIES. (1) The governing body may finance services and facilities available on a jurisdiction-wide basis by levying taxes, imposing service charges or assessments, or out of any other funds at its disposal.

(2) The governing body may finance the construction of any facility benefiting the jurisdiction as a whole or part of the jurisdiction by issuing general obligation bonds, revenue bonds, and creating local improvement district and issuing local improvement bonds. Bonds shall be issued as provided in part 10 of this title.

SECTION 47A-6-107. REVENUE BOND FINANCING OF SERVICES AND FACILITIES. (1) The governing body may finance the construction of any revenue producing facility authorized by this title by issuing revenue bonds as provided in part 9 of this title.

(2) Revenue bonds may be used to finance revenue producing facilities provided either jurisdiction-wide or on a district basis.

(3) Any facility may be financed in part by general obligation bonds, or local improvement district bonds, and in part by revenue bonds.

SECTION 47A-6-108. SUBORDINATE SERVICE DISTRICTS. (1) Subordinate service districts to provide one or more of the services or facilities authorized by this title may be established, operated, altered, or abolished by the governing body by ordinance.

(2) Subordinate service districts may include all or any part of the jurisdictional area of the local government. Two or more local governments may create a joint subordinate service district by interlocal agreement.

(3) Subordinate service districts may be administered directly by the local government with or without an advisory board, or the governing body, may by ordinance, establish an administrative board to administer the subordinate service district.

(4) A service district may not be established if the service or services or facilities proposed to be provided can be provided either by an existing subordinate service district or by annexation to an incorporated municipality.

(5) The governing body may levy special district taxes, impose charges, or assessments, or establish service charges in service districts to finance the services provided or it may finance the services out of any other funds available to it.

(6) The governing body shall, in addition to all other requirements, publish notice of the adoption of the ordinance creating the service district. If, within 30 days of the public notice fifty per cent (50%) or more of the electors residing in the proposed service district file a notice of protest in the form prescribed by the local government, then the ordinance creating the service district shall be void. The notice shall include a statement setting out the residents' right to protest.

SECTION 47A-6-109. JOINT SERVICE AND LOCAL IMPROVEMENT DISTRICTS. (1) A joint subordinate service and local improvement district may be created to provide both services and facilities.

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(2) A joint district may be created by giving notice to all persons entitled to notice by section 47A-6-108 and to all persons entitled to notice by section 47A-6-110 and by complying with all requirements for the creation of a subordinate service district and a local improvement district.

(3) If within thirty (30) days of notice of intent to create a joint district, either fifty per cent (50%) of the electors or the owners of property bearing one-half (1/2) of the estimated first year cost protest, the governing body may not proceed with the joint district except under provisions of section 47A-6-111.

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SECTION 47A-6-110. LOCAL IMPROVEMENT DISTRICTS. (1) The governing body may establish a local improvement district for the purpose of financing capital improvements which benefit property within the district.

(2) Procedures to establish a local improvement district may be initiated by either:

(a) a petition to the governing body by the owners of one-half (1/2) in assessed value of the property to be benefited; or

(b) the governing body.

(3) When a petition or resolution proposing a local improvement district is presented to the governing body, the governing body shall find by resolution if:

(a) the proposed improvement is necessary and should be made, and;

(b) the proposal has sufficient and proper petitioners.

(4) The findings of the governing body on the necessity of the proposal and the sufficiency of the petition are conclusive.

(5) If the governing body passes a resolution approving an improvement proposal, the chief executive officer shall develop a proposed improvement and payment plan including a description of the project, a cost estimate, whether the work will be let to bid, the percentage of the cost to be assessed against the property in the district, the method by which the cost will be apportioned, estimated assessments, and a map showing the property to be assessed for the improvement. When completed, the plan shall be filed with the governing body.

(6) "Project" means any combination of the following:

(a) any construction, leasing, acquisition, extraordinary maintenance, or repair;

(b) any legal work, preliminary studies, surveying, planning, testing or design work, and project supervision and administration;

(c) any lands or rights in land to be acquired;

(d) any furnishings, machinery, apparatus, or equipment normally classified as capital items; but the items must have a useful life of five (5) years or more if financed separately and not as a part of a construction project;

(e) the local government's share of the cost of a project undertaken jointly with one (1) or more local governments, the state, or the federal government;

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- (f) cost of damages caused by construction of an improvement;
- (g) cost of interest on bonds issued to finance projects; and
- (h) cost of local government administration and supervision.

(7) The governing body may pay the whole or any part of the cost of any local improvement district.

(8) The governing body shall adopt a resolution of intent to adopt the improvement plan and set a time for a public hearing on the improvement plan. The governing body shall publish notice of the hearing and mail notice of the hearing to every record owner of property within the local improvement district. The notice shall include a statement of the right to protest.

(9) The record owner of property is conclusively presumed to be the person in whose name the property is listed on the last property tax roll. If the owner is unknown, the assessment may be made against "unknown owner".

(10) A municipal governing body may include in special districts property abutting a street or highway and lying outside the boundaries of the municipality so long as that portion of the street or public highway is adjacent to the boundary line of the municipality or lies partially within the municipality or extends from one point within the municipality to another point within the municipality.

SECTION 47A-6-111. OBJECTIONS AND REVISION. (1) Objections to the improvement plan may be filed for thirty (30) days following the first publication of notice. The governing body may, by resolution, approve the plan and proceed with the improvement if the owners of property bearing one-half (1/2) of the estimated cost of the improvement do not object in writing.

(2) If objections are made by owners of property bearing one-half (1/2) of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections, and the objections are reduced to less than the owners of property bearing one-half (1/2) of the estimated cost.

(3) A revised plan shall be approved and adopted as an original plan.

(4) When the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running at a right angle, or substantially so, with the single cross block so proposed to be paved, the governing body shall have the right to overrule any and all objections and pave the proposed block.

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(5) In case the improvement is the construction of a sanitary sewer, the protest may be overruled by an affirmative vote of a majority of the members of the governing body; unless the protest is made by the owners of more than seventy-five per cent (75%) of the property affected, in which event the protest must be sustained as to the construction of the sanitary sewer.

(6) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, a municipality, or federal government shall be considered to the same effect as other property in the proposed district.

(7) The governing body may adjourn the hearing from time to time and a protester shall have the right to withdraw his protest at any time before final action by the local governing body.

SECTION 47A-6-112. PERFORMANCE OF WORK. (1) As provided in the improvement plan, the governing body may either authorize local government employees to perform the work or let the project to bid under the procedures of section 47A-9-308.

(2) If the bids are rejected, or no bids are received, the governing body may, without further proceeding, at any time within two (2) years, whenever and as often as the governing body considers it advantageous, readvertise for proposals or bids for the performance of the work.

(3) If the original bidder neglects, fails, or refuses for fifteen (15) days after the notice of award to enter into the contract, the governing body may, without further proceedings, again advertise for proposals or bids.

(4) If the contractor does not complete the work within the time limited in the contract or within such further time as the governing body may give him, the governing body may relet the unfinished portion of the work in the same manner as the original contract, or the governing body may, at its option complete the contract, and deduct any cost in excess of the contract price from any monies, bonds, or warrants due the contractor. In the event there are no monies, bonds, or warrants due the contractor from which to deduct the cost, the governing body may sue the contractor to recover the cost.

SECTION 47A-6-113. 3. PAYMENT OF CONTRACTS. The governing body shall provide for making payment for improvement in any special improvement district by the following method: As authorized in Title 47, part 9, the governing body shall sell bonds or issue warrants in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district. The proceeds of the sale shall be used to make payment to the contractor or contractors. The payment may be made either from time to time on estimates made by the engineer in charge of the improvements for the governing body, or upon the completion of the improvements and acceptance thereof by the governing body.

SECTION 47A-6-114. ASSESSMENT ROLL. (1) At any time after approval of the improvement plan and the awarding of a contract, the governing body shall assess the authorized percentage of the cost established by the governing body or contract, against each parcel within the improvement district.

(2) The assessment against each parcel within the improvement district may be made by one (1) of the following methods:

(a) Frontage basis. Each parcel of land within the district abutting upon the improvement shall be assessed for that part of the whole cost which its abutting frontage bears to the frontage on the improvement of the entire district.

(b) Area basis. Each parcel within the district shall be assessed for that part of the whole cost which its area bears to the entire assessable area within the district.

(c) Value basis. Each parcel within a district shall be assessed for that part of the whole cost which its assessed valuation bears to the entire assessed valuation within the district.

(d) Proximity basis. Each parcel or a part of a parcel within a district shall be assessed based on the relative distance of each parcel or a part of a parcel from the improvement.

(e) Floor space basis. Each parcel or part of a parcel within a district shall be assessed based on the square footage of floor space in any improvement on the parcel or a part of the parcel and the various uses of that floor space.

(f) Relative usefulness basis. Each parcel or a part of a parcel within a district shall be assessed based on the relative usefulness of the improvement to each parcel or part of a parcel of land within the improvement district.

(g) Connection basis. Utility service connections may be assessed separately upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts, or parcel of land served by the utility connection or connections.

(h) Combination basis. A portion of the whole cost may be assessed by one of the above methods and the remainder by other methods. The portion to be assessed by each method shall be determined by the governing body.

(3) Whenever any lot, piece, or parcel of land belonging to the state of Montana, United States, or mandatory of the government shall front upon the proposed work or improvement, or be included within the district declared by the governing body in its improvement plan to be the district to be assessed to pay the costs and

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expenses thereof, the governing body may, in the improvement plan, declare that the lots, pieces, or parcels of land, shall be omitted from the assessment thereafter to be made to cover the costs and expenses of the work or improvement, and the cost of the work or improvement in front of the lots, pieces, or parcels of land shall be paid by the local government, or the governing body may assess the property as other property in the district.

(4) The governing body shall, in its discretion, select the method of assessment which most nearly matches the assessment on each parcel to the benefit received by the parcel.

(5) The payment of assessments may be spread over a term not to exceed twenty (20) years; payments to be made in equal annual installments, or the governing body may provide for an alternative method of payment. The governing body may provide for receiving payment of the installments of the assessment before they become due and using the proceeds thereof in paying for the project, redeeming the bonds, or for investing the proceeds.

(6) The commission may determine the value of improvements previously installed or work done and credit the value of the improvements or work against the assessments levied against the effected property.

(7) The assessments shall be entered on a special assessment roll containing property descriptions, names of the record owners, and the amount of the assessment.

(8) The governing body shall fix a time and place to hear objections to the assessment roll. Notice of the hearing and assessment shall be published.

(9) After the public hearing, the governing body shall correct errors and any inequalities in the roll adopted and certify it corrected.

SECTION 47A-6-115. REASSESSMENT. (1) The governing body may correct any deficiency or mistake in a special assessment or at any time may increase an assessment to include damages awarded by a court against the district.

(2) Notice and hearing must conform to the initial assessment procedures.

(3) Payments on the initial assessment are credited to the property upon reassessment.

(4) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

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SECTION 47A-6-116. OBJECTION AND APPEAL. (1) The regularity or validity of an assessment may not be contested by a person who did not file a written objection to the assessment roll before its confirmation.

(2) The decision of the governing body upon an objection may be appealed to the district court within thirty (30) days of the date of confirmation of the assessment roll.

(3) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

SECTION 47A-6-117. PAYMENT. (1) The municipal and county finance officers shall annually certify by (Insert date for certification of other taxes) to the county assessor all special assessments due. The special assessments shall be collected in the same manner as property taxes.

(2) All special assessments shall be payable on or before six o'clock (6) p.m. on November 30 of each year, and in event the assessments are not paid on or before that date, the assessments shall be subject to the same interest and penalties for nonpayment as are provided by the laws of the state of Montana for other delinquent taxes.

(3) All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the special assessments provided for under this section.

(4) When the payment of any one installment of special assessment becomes delinquent, the governing body may, by resolution, declare all subsequent installments of the special assessment delinquent. The delinquent special assessments shall be certified to the county finance administrator, who shall collect the delinquent special assessments in the same manner and at the same time as the taxes are collected by him, and if the special assessments are not paid, the whole property shall be sold, the same as other property is sold for taxes.

SECTION 47A-6-118. DELINQUENT ASSESSMENTS MAY BE REINSTATED. When any special assessment, or installment, or installments of special assessments have become delinquent, and are so declared by appropriate resolution of the governing body, and have been certified to the finance administrator for collection, as herein provided, the governing body may at its option, upon the payment to the finance administrator of the assessment, or the installment or installments of special assessments, and interest, up to date, by appropriate resolution, be withdrawn from the finance administrator and canceled from his records and proceedings as delinquent, and reinstated in the office of the finance administrator and on the assessment book thereof. The withdrawal and reinstatement may be had and made at any time before or after sale of the property for delinquent taxes, and before the tax deed has been executed. The

certified copy of the resolution of the governing body with reference to the payment, withdrawal, and reinstatement filed with the finance administrator shall be authority to and for the finance administrator to cancel and withdraw the delinquent special assessments or any installments thereof.

SECTION 47A-6-119. PAYMENT OF SPECIAL ASSESSMENTS UNDER PROTEST - ACTION TO RECOVER. When any special assessment levied and assessed under any of the provisions of this act is considered unlawful by the party whose property is thus taxed, or from whom the special assessment is demanded, the person may pay the tax or any part thereof considered unlawful under protest to the finance administrator; and the party so paying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom the special assessment was paid, or against the city in whose behalf the same was collected, to recover the tax or any portion thereof, so paid under protest; however, any action instituted to recover any special assessment paid under protest must be commenced within sixty (60) days after the date of payment thereof. The special assessment so paid under protest shall be held by the finance administrator until the determination of any action brought for the recovery thereof.

SECTION 47A-6-120. MISTAKES OR MISNOMERS NOT TO INVALIDATE ASSESSMENT. When under any of the provisions of this title special assessments are assessed against any lot or parcel of land or a part of a parcel as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, shall affect the assessment, or render it void.

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- Solid Waste
- Water

These chapters will provide for and regulate delivery of services by general powers local governments. Although the draft code authorizes each of these services, it does not yet contain laws specifically regulating each of the services. Based on the staff study of each service area, the staff will submit proposed chapters on each service to the Commission prior to April 30, 1976.

PART 7

POWERS AND SERVICES OF SELF-GOVERNMENT LOCAL GOVERNMENTS

POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENT

Part 7, Chapters 1 and 2, Title 47A
R.C.M. 1947

47A-7-101. Self-government powers. As provided by Article XI, section 6 of the Montana constitution a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include, but are not limited to, the powers granted to general power governments by Title 47A, Part 5.

47A-7-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include, but are not limited to, those services and functions which general power government units are authorized to provide or perform by Title 47A, Part 6.

47A-7-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function, except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

47A-7-104. Legislative power vested in legislative bodies. The powers of a self-government unit unless otherwise specifically provided are vested in the local government legislative body and may be exercised only by ordinance or resolution.

47A-7-105. State law applicable. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner and subject to the limitations provided in this Title.

47A-7-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government

power or authority shall be resolved in favor of the existence of that power or authority.

CHAPTER 2--LIMITATIONS ON SELF-GOVERNMENT
LOCAL GOVERNMENTS

47A-7-201. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) Any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) Any power that applies to or affects the provisions of Title 41 (labor), chapter 16 of Title 59 (collective bargaining for public employees), Title 87 (unemployment compensation), or Title 92 (workmen's compensation) except that subject to the provisions of those titles it may exercise any power of a public employer with regard to its employees;

(3) Any power that applies to or affects the public school system except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) Any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) Any power that establishes a rate or price otherwise determined by a state agency;

(6) Any power that applies to or affects any determination of the state department of lands with regard to any mining plan, permit, or contract;

(7) Any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) Any power that defines as an offense conduct made criminal by state statute, or which defines an offense as a felony, or which fixes the penalty or sentence for a misdemeanor in excess of a fine of five hundred dollars (\$500) or six (6) months imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) Any power that applies to or affects the right to

keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) Any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) Any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 66, (professions and occupations) as prerequisites to the carrying on of a profession or occupation.

(12) Any power that applies to or affects Title 26 (fish and game).

47A-7-202. Powers requiring delegation. A local government unit with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) The power to authorize a tax on income or the sale of goods or services. This section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) The power to regulate private activity beyond its geographic limits;

(3) The power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on inter-local cooperation;

(4) The power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) The power to regulate any form of gambling, lotteries, or gift enterprises.

47A-7-203. Consistency with state regulation required.

(1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or

requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules and regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

47A-7-204. Mandatory provisions. A local government with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:

(1) All-state-laws-providing-for-the-incorporation-or disincorporation-of-cities-and-towns,-for-the-annexation, disannexation-or-exclusion-of-territory-from-a-city-or-town, for-the-creation,-abandonment-or-boundary-alteration-of counties-and-for-city-county-consolidation; part 2 of Title 47A, Local Government Formation;

(2) Title-16,-chapter-5; chapter 1, part 3, Title 47A, Government Study Commissions;

(3) All-laws-establishing-legislative-procedures-or requirements-for-units-of-local-government; chapter 3, part 3, Title 47A, Commission Organization and Procedures;

(4) All-laws-regulating-the-election-of-local-officials; chapter 6, part 3, Title 47A, Elections;

(5) All laws which require or regulate planning or zoning;

(6) Any-law-directing-or-requiring-a-local-government or-any-officer-or-employee-of-a-local-government-to-carry out-any-function-or-provide-any-service; part 8, Title 47A, Duties of Local Governments as Agents of the State;

(7) Any-law-regulating-the-budget,-finance-or-borrowing procedures-and-powers-of-local-governments,-except-that-the mill-levy-limits-established-by-state-law-shall-not-apply; chapter 1, part 9, Title 47A, General Provisions; chapter 2, part 9, Title 47A, Budget and Appropriation; chapter 3, part 9, Title 47A, Local Government Financial Administration; chapter 5, part 9, Title 47A, Debt Management.

(8) Title 93, chapter 99, eminent domain.

History: Enacted Sec. 1, chap. 345, S.L. 1975.
Effective May 2, 1977.

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PART 8

DUTIES OF LOCAL GOVERNMENTS AS AGENTS OF THE STATE

PART 8, CHAPTER 1

GENERAL PROVISIONS

SECTION 47A-8-101. PURPOSE. (1) It is the policy of the state of Montana to encourage resourceful and responsible local government.

(2) To further this policy it is the purpose of this chapter to set out those services and facilities which a local government must provide.

(3) In providing any service or facility required by this part, a local government acts as an agent of the state.

SECTION 47A-8-102. BY WHOM PERFORMED. (1) The governing body of the local government shall provide by ordinance for the provision of the services and facilities required by this part.

(2) The governing body shall by ordinance assign responsibility for required services and facilities to the office of an elected officer or to a department of the local government.

(3) The governing body shall appropriate sufficient funds to fully provide the required services and facilities.

(4) The governing body may by ordinance at any time reassign responsibility for any required service or facility to the office of a different elected official or to a different department of the local government.

(5) The county may enter into interlocal agreements with other entities to provide services and facilities required by this part.

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PART 8, CHAPTER 2

RECORDS

SECTION 47A-8-201. RECORDING. Each county shall provide for the recording of the following documents:

(1) deeds, grants, transfers, contracts to sell or convey real estate, mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of instruments which have been acknowledged or proved;

(2) certificates of births and deaths;

(3) wills devising real estate admitted to probate;

(4) official bonds;

(5) transcripts of judgments which by law are made liens upon real estate;

(6) instruments describing or relating to the individual property of married individuals, and sole trader judgments;

(7) all orders and decrees made by the district court in probate matters affecting property which are required to be recorded;

(8) notice of pre-emption claims;

(9) notice and declaration of water rights;

(10) assignments for the benefit of creditors;

(11) affidavits of annual work done on mining claims;

(12) notices of mining locations and declaratory statement;

(13) estrays and lost property;

(14) a book containing appraisement of state lands;

(15) notice of any lien created under authority of the laws of this state;

(16) certified copies of final judgments or decrees participating or affecting the title or possession of real property, any part of which is situated in the county, are to be filed and recorded with the record of deeds, grants and transfers;

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(17) certificates of discharge of persons honorably discharged who served with the United States forces; and

(18) such other writings as are required or permitted by law to be recorded.

SECTION 47A-8-202. INDEXES. (1) The governing body shall by ordinance require the elected official or the employee designated as the records administrator to keep the following indexes in the form prescribed by the department of community affairs:

(a) an index of deeds, grants, transfers, and contracts to seal or convey real estate;

(b) an index of real property mortgages;

(c) an index of releases of real property mortgages;

(d) an index of powers of attorney;

(e) an index of leases;

(f) an index of marriage certificates;

(g) an index of assignments of mortgages and leases;

(h) an index of wills;

(i) an index of official bonds;

(j) an index of notices of liens;

(k) an index to transcripts of judgments;

(l) an index of attachments;

(m) an index of notices of pending of actions;

(n) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceeding;

(o) an index of the separate property of married persons and sole trader judgments;

(p) an index to affidavits for annual work done on mining claims;

(q) an index of mining claims and declaratory statements;

(r) an index to the register of births and deaths;

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(s) an index to notices and declaration of water rights;

(t) an index to the "estrays and lost property book";

(u) an index to the record of assignments for the benefit of creditors;

(v) an index to financing statements as provided in Part 4 of the Uniform Commercial Code -- Secured Transactions;

(w) an index to the official records of the county as are prescribed in 47A-8-206; and,

(x) a miscellaneous index of papers not stated in this section.

(2) In keeping indexes, any county may keep in the same volume any number of the indexes mentioned in this section. All indexes must be kept separate and distinct and all volumes must be clearly marked as to which indexes they contain.

(3) A county may use methods of information storage as are authorized by the department of community affairs.

SECTION 47A-8-203. DUTY ON RECEIPT OF AN INSTRUMENT TO BE RECORDED. (1) When a document is offered to the official or the employee designated by the governing body as the records administrator, and upon the payment of the required recording fee, the records administrator shall:

(a) immediately record the document's reception in the records administrator's receipt book;

(b) either by hand, by printing, by typewriter, by photographic process, or by the use of prepared forms, immediately and without delay photograph, record, or correctly copy the document, together with all supporting or assessed documents, in a separate well bound, or to-be-bound book, and must record the instruments in the order received and note at the foot of the record the exact time of the document's reception; and

(c) endorse upon the instrument or document the time it was received, noting the year, month, day, hour, and minute of its reception, the time when and the book and pages in which it is recorded, and shall thereupon deliver it upon request to the party leaving the same for record, or to his order.

(2) The governing body may establish by ordinance reasonable fees for the recording of all documents.

(3) The records administrator is not bound to record any instrument or file any paper or notice, or furnish service connected with his office until the fee prescribed by ordinance is demanded, paid, or tendered.

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(4) The records administrator shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, is contained therein, provided that this requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

(5) Seed liens and thresher's liens filed for record with a county shall be retained by the county for a period of eight (8) years after the lien has ceased to be a lien on the property described therein.

(6) Nothing in this chapter shall be construed as preventing the recording or photography or copying of the instruments, separately, upon a single, or loose page, or pages of a book, if the page or pages shall immediately become a part of a book or volume which, when completed, shall be firmly bound and the pages securely locked or sealed into the record.

SECTION 47A-8-204. MAKING OF SEARCHES. The records administrator may, upon the application of any person, and upon the payment or tender of the required fees make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to the instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

SECTION 47A-8-205. LIABILITY FOR NEGLECT OF DUTY. Any records administrator to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded, is delivered for record is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and is punishable as provided by section 94-7-209, if he:

(1) neglects or refuses to record the instrument, paper, or notice, within reasonable time after receiving it; or

(2) records any instruments, papers, or notices in any other manner than as prescribed; or

(3) neglects or refuses to keep in his office indexes as are required by this article, or to make the proper entries therein; or

(4) neglects or refuses to make the searches and to give the certificates required by this chapter; or if the searches or certificates are incomplete or defective, when this incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested; or

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(5) alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein.

SECTION 47A-8-206. OFFICIAL RECORDS. (1) The governing body of each county shall provide for the keeping of the following official records:

(a) maps of all municipalities or additions to municipalities within the county, together with the description, acknowledgment, or other writing thereon;

(b) maps of all special service districts and limited purpose local governments and all additions to these within the county, together with the descriptions, acknowledgments, or other writings thereon;

(c) in suitable plat books, copies of all plats made or caused to be made by the county and have recorded therein a description of every public highway within the county;

(d) in suitable plat books, all final subdivision plats made within the county;

(e) a separate, correct record numbered progressively of all county surveys required by court order and of all surveys made for the county for individuals or corporations which pertain to public roads and bridges;

(f) together with the above official records, any original drawings, the original book or books of field notes, and all original calculations and computations, all properly endorsed as to their number of survey; and

(g) all other records required to be kept by law.

(2) The governing body shall upon request make copies of all official records available to the public and may impose reasonable fees for providing the copies.

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PART 8, CHAPTER 3

PUBLIC HEALTH

SECTION 47A-8-301. GENERAL DUTIES. It is the duty of each county subject to the general supervision of the state board of health to:

- (1) initiate and implement measures to protect the public health;
- (2) guard against introduction of communicable diseases;
- (3) provide for the making of inspections for sanitary conditions; and
- (4) enforce state law and administrative regulations relating to public health.

SECTION 47A-8-302. REPORTS. Each county shall:

- (1) on forms provided by the department of health and environmental sciences, report communicable diseases to the department each week;
- (2) report once each quarter to the department of health and environmental sciences on sanitary conditions in the county, together with a detailed account of public health activities on forms containing the information required by the department of health and environmental sciences; and
- (3) make other reports as may be required by the department of health and environmental sciences.

SECTION 47A-8-303. BOARD OF HEALTH. (1) The county may delegate responsibility for the duties imposed by this chapter to a board established by ordinance.

(2) If responsibility is delegated to a board, the county shall provide the department of health and environmental sciences with a copy of the ordinance establishing the board and shall inform the department as to the membership of the board and of changes therein.

(3) If no board is created, the county shall file with the department of health and environmental sciences the name or names of the county employees responsible for the duties imposed this chapter.

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PART 8, CHAPTER 4

LAW ENFORCEMENT

SECTION 47A-8-401. LAW ENFORCEMENT OFFICER. It shall be the duty of each county to provide for a chief law enforcement officer, and subordinates as may be required, who shall:

- (1) preserve the peace;
- (2) arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;
- (3) prevent and suppress all affrays, breaches of peace, riots, and insurrections which may come to the officer's knowledge;
- (4) perform the duties of humane officer within the county for the protection of animals;
- (5) attend all courts, except justices and police courts, at their respective terms or sessions held within the county, and obey their lawful orders and directions;
- (6) command the aid of as many inhabitants of the county as thought necessary in the execution of these duties;
- (7) take charge of and keep the county jail and the prisoners therein; and
- (8) on the first Monday in January, and every three months thereafter, return to the governing body a certified list of the names of all prisoners in custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding three months. In case he fails so to do, the law enforcement officer must not receive any compensation for the sustenance of the prisoners in his custody.

SECTION 47A-8-402. INQUESTS. (1) It shall be the duty of each county governing body to designate an officer or employee who shall:

- (a) hold inquests as provided in section 95-801 to 95-804;
- (b) keep an official register, to be labeled "register of inquests", in which the officer must enter the date of holding all inquests, the name of the deceased, when known, and when not, a description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what disposition of the property was made by the officer or employees; the cause of death, when known, and any other information which may pertain to the identity of the deceased;

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(c) if the officer or employee considers it necessary, he may hold an inquest as provided in section 95-801 to 95-814 when a person confined in a state institution has died. The inquest may be held only by the officer in whose county the state institution is located;

(d) whenever an inquest as described in (c) of this section is held, properly certify a statement of all costs incurred by the county in the inquest. The statement shall be certified by the officer or employee and sent to the department of institutions for approval. Upon approval, the department must cause the amount of the costs to be paid out of the money appropriated for the state institution to the county financial administrator where the inquest was held;

(e) deliver, within thirty (30) days after an inquest on a dead body, to the county financial administrator of the county or the legal representatives of the deceased any money or other property found upon the dead body;

(f) when an inquest is held by the officer or employee, and no other person takes charge of the body of the deceased, the officer or employee must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county; and

(g) file with the county financial administrator of the governing body of the county a statement in writing, verified by his affidavit, showing the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement, and the disposition of the property.

(2) If the governing body of the county fails to designate an officer or employee or the person designated is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the person designated.

SECTION 47A-8-403. COUNTY PROSECUTOR. It shall be the duty of each county to provide for a public prosecutor who may be the county legal officer. This officer must:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county;

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(2) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that the offenses have been committed, and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury, whenever cases are presented to them for their consideration;

(3) draw all indictments and informations, defend all suits brought against the state in the county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or the county;

(4) deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county financial officer;

(5) on the first Monday of January, April, July, and October, in each year, file with the financial administrator an account of all monies received by him in his official capacity during the preceding three (3) months, and at the same time pay it over to the county financial officer;

(6) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein;

(7) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court, and in the name of the state of Montana, any criminal or civil action or special proceeding, it being hereby declared that the supervisory powers granted to the attorney general by section 82-401, (5) include the power to order and direct county attorneys in all matters pertaining to the duties of their office;

(8) institute an action if the governing body of the county, without authority of law, orders any money paid as a salary, fees, or for any other purpose, and the money has been actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without authorization by the governing body of the county or by law and the same has been paid. The action shall be in the name of the county against the person or persons to recover the money so paid and for twenty-five per cent (25%) damages for the use of the monies. No order of the governing body of the county is necessary to maintain the suit; but when the money has not been paid on the order or warrants it is the duty of the county legal officer, upon receiving notice thereof, to commence an action in the name of the county for restraining its payment, and no order of the governing body of the county is necessary to maintain the action.

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SECTION 47A-8-404. CLAIMS AGAINST ATTORNEY'S OWN COUNTY. The county prosecutor, except for his own services, must not present any claim, account, or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

SECTION 47A-8-405. JAILS. (1) A jail shall be built or provided and maintained at the expense of the county in each county, except that whenever, in the discretion of the governing bodies of two or more counties, it is necessary or desirable to build, provide, or utilize a common jail, they may do so in one of the counties concerned. The common jail shall be built or provided and maintained at the expense of the counties concerned on a basis as the governing bodies shall agree. The common jail shall be kept by the law enforcement officers of the counties utilizing it on a basis as the officers utilizing the common jail shall agree.

(2) The governing body has the duty of building, inspecting, and repairing the jail, and must, once every three (3) months, inquire into its state, as respects the security thereof, and must take all necessary precaution against escape, sickness, or infection.

(3) County jails shall be used:

(a) for the detention of persons committed to secure their attendance as witnesses in criminal cases;

(b) for the detention of persons charged with crime and committed for trial;

(c) for the confinement of persons committed for contempt, or upon civil process, or by other authority of law; and

(d) for the confinement of persons sentenced to imprisonment therein upon a conviction of crime.

(4) Each county jail must contain a sufficient number of rooms to allow all persons belonging to any one of the following classes to be confined separately and distinctly from persons belonging to any of the other classes:

(a) persons committed on criminal process and detained for trial;

(b) persons already convicted of crime and held under sentence;

(c) persons detained as witnesses, or held under civil process, or under an order imposing punishment for a contempt;

(d) males separately from females; and

(e) juveniles separately from adults.

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SECTION 47A-8-406. WHO MAY BE DETAINED, EXPENSE OF PRISONERS, EXCEPTIONS. (1) The chief law enforcement officer must receive all persons committed to jail by a competent authority, and provide them with necessary food, clothing, and bedding, for which claims shall be submitted for the actual expenses incurred to the governing body of the county for their determination, and, except as provided in this section, to be paid out of the county treasury.

(2) If a person is committed to jail by an agency of the state of Montana, the agency shall upon a claim presented by the county pay the county the actual and necessary expenses incurred for each and every prisoner held in the county jail upon order or commitment of the agency. For the purposes of this section, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration.

(3) If the governing body of the county and the United States through or by the proper officer or officers enter into an agreement that the United States shall pay on demand by the county the actual and necessary expenses for each federal prisoner confined, the chief law enforcement officer must receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States until the prisoner is discharged according to law as if he had been committed under process issued under the authority of this state;

(4) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the chief law enforcement officer is not bound to receive the person, unless security is given on the part of the party at whose instance the process is issued by a deposit of money to meet expenses of necessary food, clothing, and bedding for the person committed or to detain the person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or order of court.

(5) If, in the opinion of the chief law enforcement officer, any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the prisoner shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county prosecutor shall initiate proceedings to collect any charges arising from medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

SECTION 47A-8-407. PRISONERS. (1) Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process must not be kept or put into the same room, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

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(2) A prisoner committed to the county jail for trial, or for examination, or upon conviction for a public offense must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

(3) A chief law enforcement officer to whose custody a prisoner is committed, as provided in section 47A-8-406 (3), is answerable for his safekeeping in the courts of the United States according to the laws thereof.

(4) A law enforcement officer or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served must forthwith deliver it to the prisoner with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

(5) Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding may be required by the governing body of the county to perform labor on the public works or ways in the county. The governing body of the county making the order may prescribe and enforce the rules and regulations under which the labor is to be performed.

SECTION 47A-8-408. REMOVAL OF PRISONERS IN CASE OF FIRE OR PESTILENCE. (1) When a county jail or building contiguous to it is on fire, and there is reason to believe that the prisoners may be injured or endangered, the chief law enforcement officer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail, and a physician certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the district court and authorize the chief law enforcement officer to remove the prisoners to the place or jail designated and there confine them until they can be safely returned to the jail from which they were taken.

SECTION 47A-8-409. CONTIGUOUS COUNTY JAIL-WHEN USED-PROCESS. (1) When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment filed with the clerk of the district court, designate the jail of a contiguous county for the confinement of the prisoners of his county, or any of them, and may at any time modify or annul the appointment.

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(2) A copy of the appointment, certified by the clerk of the district court, must be served on the officer or keeper of the jail designated; that officer or keeper must receive into his jail all prisoners authorized to be confined in it, in accordance with this section; the officer or keeper is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were chief law enforcement officer of the county for whose use his jail is designated; and with respect to the persons so committed, he is deemed the chief law enforcement officer of the county from which they were removed;

(3) When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased, and that it is revoked;

(4) The clerk must immediately serve a copy of the revocation upon the chief law enforcement officer of the county, who must thereupon remove the prisoners to the jail from which the removal was made.

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PART 8, CHAPTER 5

JUDICIAL

SECTION 47A-8-501. JUSTICE COURTS. (1) Each county shall provide for the election of one or more justices of the peace.

(2) Each justice of the peace shall have the powers and duties assigned by law.

(3) The county governing body shall provide for each justice of the peace:

(a) the office, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage office equipment, and supplies necessary in the proper keeping of records and files of the judicial office and the transaction of business; and

(c) the latest edition of the Revised Codes of Montana and all official supplements thereto.

(4) All actual and necessary expenses incurred by the justice of the peace in the performance of his official duties are a legal charge against the county.

(5) Each justice of the peace shall receive the compensation established by state law.

SECTION 47A-8-502. DISTRICT COURT FACILITIES. (1) Each county shall provide the district court with suitable rooms and chambers together with attendants, furniture, fuel, lights, books, and stationery necessary for the transaction of the court's business.

(2) Each county shall provide for the safe keeping of court records, adequately protecting them against fire and other hazards.

(3) If a county fails to meet the obligations imposed by this section, the district judge may order the deficiency corrected at county expense.

SECTION 47A-8-503. CLERK OF DISTRICT COURT. Each county shall designate an elected official or an employee to perform the following duties:

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(1) take charge of and safely keep, or dispose of according to law, all books, papers, and records which may be filed or deposited with or in the district court;

(2) act as clerk of the district court, and attend each term or session thereof, and attend the judges at chambers when required;

(3) issue all processes and notices required to be issued; enter all orders, judgments, and decrees proper to be entered; keep in each court a register of action, as provided in the code of civil procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged;

(4) keep for the district court, in separate volumes, an index of all suits, labeled "general index - plaintiffs", each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "number of suit", "plaintiffs", "defendants", "date of judgment", "number of judgment", "page of entry of judgment in judgment book", "page of minute book of district court"; also, an index labeled "general index - defendants", each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "number of suit", "defendants", "plaintiffs", "date of judgment", "number of judgment", "page of entry of judgment in judgment book", "page in minute book of district court";

(5) keep a minute book containing the daily proceedings of the court which may be signed by the clerk, the minute book must be indexed by the names of both defendant and plaintiff;

(6) keep a book called "record of probate proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed elsewhere in this code. The index must be indexed in the name of the deceased person, the executor or administrator, the guardian or ward;

(7) keep a book called the "probate record book", in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed elsewhere in this code. The record must be indexed in the same manner as the "record of probate proceedings";

(8) keep proper books for indexing bonds given in criminal cases and all the bonds filed therein shall be entered showing the title and docket number of the case in which the bond is filed, the names of principals and sureties on the bonds in alphabetical order, the date and amount of the bond and, upon its release, the date of the order or authority for the release;

(9) keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare, their intention to become citizens of the United States, and the date of the declaration. The book must be labeled "declaration of intention to become citizens of the United States"; in the other book must be entered in alphabetical order the names of all persons who have been, or may

hereafter be admitted as citizens of the United States by the court of which he is clerk; this book must be labeled "naturalization - final papers"; the clerk must enter in a separate column, opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him a citizen;

(10) keep a book, called "register of criminal actions", in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the name of every witness, number of days in attendance, the witnesses' fees, and a proper index to the register;

(11) keep a book, called "register of probate and guardianship proceedings", in which must be entered the name of the estate; the register number; a memorandum of every paper filed, order, or proceeding had therein; with the date thereof; and the fees charged;

(12) keep an index book of persons committed to state institutions as provided in section 38-208;

(13) keep a fee book, in which must be shown in an itemized form, all fees that he has received for any services rendered as clerk;

(14) keep a book called "book of jurors' certificates", in which must be contained the blank certificates and stubs to be filled, as provided in this code;

(15) keep a "witness book", in which must be contained blank certificates and stubs to be filled as provided in this code;

(16) keep a record of the attendance of all jurors, and of witnesses in criminal actions, and compute the mileage of each;

(17) keep in a separate book a general index to court records and an inverse general index to court records. Each index shall be in the form prescribed by supreme court rule. Entries shall be made in each index as the progress of the case may require.

SECTION 47A-8-504. JURORS. (1) Each county shall provide the district court with a jury list drawn as provided in chapter 14 of Title 93.

(2) The officer or employee designated in the preceding section shall receive the list and prepare jury boxes as provided in chapters 14 and 15 of Title 93.

(3) The chief law enforcement officer shall summon jurors as provided in section 93-1509.

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(4) The county shall pay jurors' fees as provided in chapter 4 of Title 25.

SECTION 47A-8-505. WITNESSES. (1) The county shall pay witnesses as provided in chapter 4 of Title 25.

(2) The officer or employee designated as provided in section 47A-8-503 shall issue summons for witnesses as provided by law.

SECTION 47A-8-506. COURT REPORTERS. (1) Each district court judge may appoint a court reporter as provided by section 92-1901.

(2) The salary and expenses of the court reporter shall be paid by the county subject to the limits contained in section 93-1906.

(3) If more than one county is included within the judicial district, the court reporter's salary and expenses shall be apportioned between the counties as provided in section 93-1906.

SECTION 47A-8-507. INTERPRETERS. (1) Whenever a party to or a witness in any legal proceeding cannot speak or understand the English language, the court may appoint an interpreter.

(2) The county shall pay a reasonable fee for the services of of an interpreter as the court may establish.

SECTION 47A-8-508. PUBLIC DEFENDERS. Each county shall pay the compensation and expenses of counsel assigned to represent indigent criminal defendants as provided in section 95-1005.

SECTION 47A-8-509. YOUTH PROBATION OFFICER. Each county shall provide facilities for and pay the salaries and expenses of the youth court probation officer in the manner and subject to the limitations contained in section 10-1234.

SECTION 47A-8-510. SERVICE OF PROCESS. Each county shall designate an officer or employee who shall:

(1) endorse all notices and processes with the year, month, day, hour, and minute of reception, and issue to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

(2) serve all process or notices in the manner prescribed by law; and

(3) certify by hand upon the process or notice the manner and time of service, or if there is a failure to make service, the reasons for the failure, and return the same without delay.

PART 8, CHAPTER 6

ADMINISTRATIVE

SECTION 47A-8-601. ASSESSMENT OF TAXES. (1) Each county shall designate an elected official or an employee as the agent of the state who shall supervise the assessment of property for taxation as provided in Title 84.

(2) The county shall make reports as are required by the department of revenue.

SECTION 47A-8-602. LEVY AND COLLECTION OF TAXES. (1) Each county shall levy all property taxes certified to it by the state, or by school district, limited purpose local government, a municipality, or other entity authorized by law to certify property taxes to a county for collection located wholly or partially within the county.

(2) If the jurisdictional area of the entity certifying the tax is less than county wide, the tax shall only be levied on that part of the county that is within the jurisdictional area of the entity.

(3) All monies collected by the county on the levies shall be deposited in the county trust and agency account until remitted to the certifying entity as provided by law.

SECTION 47A-8-603. SCHOOL DISTRICT FINANCE. Each county, through its financial administrator, shall provide to school districts located within its boundaries the following services:

(1) keep all school monies in a separate fund and keep a separate account of their disbursement to the several school districts which are entitled to receive them according to the apportionment of the county school district officer or the officer or body who shall decide the apportionment;

(2) notify the officer or body of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform the officer or body of the amount of school monies belonging to any other fund subject to apportionment;

(3) pay all warrants drawn on school district monies, in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by holders;

(4) make annually during the month of September a financial report for the last preceding year ending with August 31 to the officer or body in the form as may be required by the officer or body; and

(5) comply with other financial requirements as are prescribed in Title 75.

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SECTION 47A-8-604. BOARD OF SCHOOL BUDGET SUPERVISORS. The governing body of the county shall constitute the board of school budget supervisors and in that capacity shall exercise the powers and duties prescribed in Title 75. The board may appoint the county school district officer as clerk of the board.

SECTION 47A-8-605. ELECTIONS. (1) Each county shall provide for the registration of electors as provided in Title 23.

(2) Each county shall undertake all action and provide all facilities, materials, supplies, and personnel required by Title 23 to conduct state or other elections.

(3) Each county shall provide each municipality, school district, or limited purpose local government with lists of registered voters and all other materials and assistance required by Title 23 for their elections.

SECTION 47A-8-606. PUBLIC WELFARE. (1) Each county shall levy a millage in the amount required by Title 71 for public assistance.

(2) Monies raised by the millage for public assistance shall be budgeted and expended as provided in Title 71.

(3) Each county shall employ personnel to administer public assistance in the manner established by Title 71.

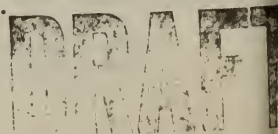
(4) The governing body of the county shall constitute the county welfare board with the powers and duties established by Title 71

SECTION 47A-8-607. WEED CONTROL. (1) Each county shall provide for the control of noxious weeds.

(2) Noxious weeds are Canadian thistle (*cirsium arvense* L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.), white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pieris pallas.*), and other weed or weeds as may be defined and designated as a noxious weed by the county governing body, subject to the approval of the county extension agent or agricultural experiment station at Montana state university.

(3) The county shall assess the cost of controlling noxious weeds against the owner of the property on which the weeds are located, except that the county may contribute up to one third (1/3) of the cost of controlling weeds on private property. The cost of controlling weeds on the right of way of a state or federal highway shall be assessed against the state and paid from the state fund. The governing body of the county may levy a tax in the amount required to control noxious weeds.

(4) The governing body may create either an administrative board to administer the noxious weed control program or administer the program directly with or without an advisory board.



SECTION 47A-8-608. PUBLIC ADMINISTRATOR. Each county shall designate an officer or employee to carry out the duties of the public administrator as established by chapter 6 of Title 91.

SECTION 47A-8-609. TAX APPEALS BOARD. (1) The governing body of each county shall appoint a county tax appeals board as provided in section 84-601.

(2) The tax appeals board shall have the power and shall proceed as provided in chapter 6 of Title 84.

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PART 9

LOCAL GOVERNMENT FINANCES

PART 9, CHAPTER 1

GENERAL PROVISIONS

SECTION 47A-9-101. STRICT ACCOUNTABILITY. In accordance with Article VIII, section 12 of the Montana constitution, it is the purpose of this part to insure strict accountability of all local government finance through minimum statutory standards, state technical assistance and supervision, and effective local government management.

SECTION 47A-9-102. LOCAL GOVERNMENT FINANCE ADVISORY COUNCIL. The department of community affairs shall establish a local government finance advisory council. The council shall include, but not be limited to, local and state officers and employees familiar with local government finance administration. It shall review all rules pertaining to local government finance prior to their adoption.

SECTION 47A-9-103. TECHNICAL ASSISTANCE. The department of community affairs shall provide technical assistance upon request to local governments in order to improve the administration of local government finance.

SECTION 47A-9-104. FINANCIAL RULES AND FORMS BY THE DEPARTMENT OF COMMUNITY AFFAIRS. (1) The department of community affairs shall adopt rules and forms for local government financial accounting, budgeting, and reporting procedures.

(2) The rules shall:

(a) permit the full utilization of a modern budgeting, accounting, and reporting system;

(b) provide a system of internal control;

(c) provide citizens, local government governing bodies, and officials with a greater measure of control over public monies;

(d) enable the records of local governments to accurately reflect governmental cost and resources;

(e) provide for a uniform fund structure and chart of accounts which shall be utilized in all budgeting, accounting, and reporting systems; and

(f) coordinate the utilization of data processing systems for all governmental purposes.

(3) The department shall, where practicable, utilize the standards and recommendations established by the national council on governmental accounting.

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SECTION 47A-9-105. LOCAL FINANCE ORDINANCES. A governing body may adopt ordinances regulating local government financial administration. All the ordinances must be consistent with the constitution of Montana, the laws of Montana, the charter of the local government, and the rules adopted by the department of community affairs pursuant to this title.

SECTION 47A-9-106. ANNUAL COMPILATIONS BY DEPARTMENT OF COMMUNITY AFFAIRS. The department of community affairs shall reproduce annual compilations of:

- (1) local government budgets and mill levies; and
- (2) local government financial reports.

SECTION 47A-9-107. AUDITS. The department of community affairs shall audit the affairs of local governments as provided by sections 82-4515-4529.

SECTION 47A-9-108. LOCAL GOVERNMENT FINANCIAL EMERGENCIES. [to be drafted. This section will regulate local government finance administration in the event of fiscal emergencies]

SECTION 47A-9-109. DEFINITIONS. Unless otherwise provided or the context otherwise requires, as used in this title:

(1) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operations of a local government or any of its funds, balanced account groups, and organizational components.

(2) "Appropriation" means the authorization granted by a governing body to make expenditures and to incur obligations for specific purposes.

(3) "Assess" means to value property officially for the purpose of taxation.

(4) "Assessment" means the process of making the official valuation of property for purposes of taxation.

(5) "Audit" means the examination of documents, records, reports, systems of internal control, accounting, and financial procedures.

(6) "Budget" means a plan of financial operation embodying an estimate of proposed expenditures for a given period and the proposed means of financing them. An adopted budget shall be considered the appropriation for the ensuing fiscal year.

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(7) "Capital program" means the plan for capital expenditures to be incurred each year over a fixed period of years to meet capital needs arising from the long term work program or otherwise. It sets forth each project or other contemplated expenditure in which the government is to have a part and specifies the full resources estimated to be available to finance the projected expenditures.

(8) "Cash" means currency, coin, checks, postal and express money orders, and bankers' drafts on hand or on deposit with an official or employee.

(9) "Character" means a basis for distinguishing expenditures according to the periods they are presumed to benefit.

(10) "Check" means a bill of exchange drawn on a bank and payable on demand; a written order on a bank to pay on demand a specified sum of money to a named person, to his order, or to bearer out of money on deposit to the credit of the maker.

(11) "Debt" means an obligation resulting from the borrowing of money or from the purchase of goods and services.

(12) "Debt service fund" means a fund established to finance and account for the payment of interest and principal on debt.

(13) "Delinquent tax" means a tax remaining unpaid on and after the date on which a penalty for non-payment is attached. Even though the penalty may be subsequently waived and a portion of the tax may be abated or cancelled, the unpaid balance continues to be a delinquent tax until abated, cancelled, paid, or converted into a tax lien.

(14) "Disbursement" means payment in cash.

(15) "Encumbrance" means an obligation in the form of a purchase order, contract, or salary commitment which is chargeable to an appropriation and for which a part of the appropriation is reserved. It ceases to be an encumbrance when paid or when the actual liability is set up.

(16) "Estimated revenue" means the amount of revenue estimated to accrue during a given period regardless of whether or not it is all to be collected during the period.

(17) "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

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(18) "Fund accounts" mean all accounts necessary to set forth the financial operations and financial position of a fund.

(19) "General fund" means a fund used to account for all transactions of a local government which are not accounted for in another fund.

(20) "General revenue" means the revenues of a local government other than those derived from and retained in an enterprise.

(21) "Grant" means a contribution by one governmental unit to another unit. The contribution is usually made to aid in the support of a specified function, but it is sometimes also for general purposes.

(22) "Income" is a term used in accounting for governmental enterprises to represent the excess of revenues earned over the expenses incurred in carrying on the enterprise's operations.

(23) "Intergovernmental revenue" means the revenue received from other governments in the form of grants, shared revenues, or payments in lieu of taxes.

(24) "Internal control" means a plan of organization under which employees' duties are so arranged and records and procedures so designed as to make it possible to exercise effective accounting control over assets, liabilities, revenues, and expenditures. Under this system, the work of employees is subdivided so that no single employee performs a complete cycle of operations. Under this system, the procedures to be followed are definitely laid down and require proper authorization by designated officials for all actions to be taken.

(25) "Judgment" means an amount to be paid or collected by a local government as the result of a court decision, including a condemnation award in payment for private property taken for public use.

(26) "Levy" means to impose a tax, special assessment, or service charge for the support of a governmental activity, or the total amount of taxes, special assessments, or service charges imposed by a governmental unit.

(27) "Object" means (as used in expenditure classification) the article purchased or the service obtained (as distinguished from the results obtained from expenditures).

(28) "Obligation" means the amount which a local government may be required legally to meet out of its resources. It includes not only actual liabilities, but also unliquidated encumbrances.

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(29) "Performance budget" means a budget wherein expenditures are based primarily upon a measurable performance of activities and work programs. A performance budget may also incorporate other bases of expenditure classification, such as character and object, but these are given a subordinate status to activity performance.

(30) "Program budget" means a budget wherein expenditures are based primarily on programs of work and secondarily on character and object.

(31) "Purchase order" means a document which authorizes the delivery of specified merchandise or the rendering of certain services and the making of a charge for them.

(32) "Registered warrant" means a warrant which is registered by the finance administrator for future payment because of present lack of funds and which is to be paid in the order of its registration.

(33) "Requisition" means a written demand or request, usually from one department to the purchasing officer or to another department, for specified articles or services.

(34) "Reserve" means an account which records a portion of the fund balance which must be segregated for some future use and which is, therefore, not available for further appropriation or expenditure.

(35) "Revenue" means designated additions to assets which:

(a) do not increase any liability;

(b) do not represent the recovery of an expenditure;

(c) do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets; and

(d) do not represent contributions of fund capital in enterprise and intragovernmental service funds. The same definition applies to those cases where revenues are recorded on the modified accrual or cash basis, except that additions would be partially or entirely to cash.

(36) "Shared revenue" means revenue which is levied by one governmental unit but shared, usually in proportion to the amount collected, with another unit of government or class of government.

(37) "Special assessment" means a compulsory levy made by a local government against certain properties to defray part or all of the cost of a specific improvement or service which is presumed to be of general benefit to the public and of special benefit to certain properties.

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(38) "Warrant" means an order drawn by the financial administrator upon the local government directing payment of a specified amount to the person named or to the bearer. It may be payable upon demand, in which case it usually circulates the same as a bank check; or it may be payable only out of certain revenues when and if received, in which case it does not circulate as freely. As used in this title, "warrant" shall include "check/warrant".

(39) "Accrual basis" means the basis of accounting under which revenues are recorded when earned and expenditures are recorded as soon as they result in liabilities for benefits received, notwithstanding that the receipt of the revenue or the payment of the expenditure may take place, in whole or in part, in another accounting period.

(40) "Bond premium" means the excess of the price at which a bond is acquired or sold over its face value. The price does not include accrued interest at the date of acquisition or sale.

(41) "Bond payable" means the face value of a bond issued and unpaid.

(42) "Callable bond" means a type of bond which permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in a manner specified in the bond contract.

(43) "Capital outlays" means expenditures which result in the acquisition of or addition to fixed assets.

(44) "Cash basis" means the basis of accounting under which revenues are recorded when received in cash and expenditures are recorded when paid.

(45) "Expenditures" means that where the accounts are kept on the accrual basis or the modified accrual basis, this term designates the cost of goods delivered or services rendered, whether paid or unpaid, including expenses, provision for debt retirement not reported as a liability of the fund from which retired, and capital outlays. Where the accounts are kept on the cash basis, the term designates only actual cash disbursements for these purposes.

(46) "Modified accrual basis" means the basis of accounting under which expenditures other than accrued interest on general long-term debt are recorded at the time liabilities are incurred and revenues are recorded when received in cash, except for material and/or available revenues which should be accrued to reflect properly the taxes levied and the revenues earned.

(47) "Registered bond" means a bond whose owner is registered with the issuing local government and which cannot be sold or exchanged without a change of registration. The bond may be registered as to principal and interest or as to principal only.

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(48) "Serial annuity bond" means a bond in which the annual installments of bond principal are so arranged that the combined payments for principal and interest are approximately the same each year.

(49) "Serial bond" means a bond the principal of which is repaid in periodic installments over the life of the issue.

(50) "Straight serial bond" means a bond in which the annual installments of bond principal are approximately equal.

(51) "Activity" means a specific and distinguishable line of work performed by one or more organizational components of a local government for the purpose of accomplishing a function for which the local government is responsible.

(52) "Function" means a group of related activities aimed at accomplishing a major service or regulatory program of local government.

(53) "Resources" means the actual assets of a local government such as cash, taxes receivable, land, buildings, and other assets, plus contingent assets such as estimated revenues applying to the current fiscal year not accrued or collected and bonds authorized and unissued.

(54) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(55) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(56) "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, or any other criteria as considered appropriate.

(57) "Program size indicator" means a measure to indicate the magnitude of a program.

(58) "Priority listing" means a ranking of proposed expenditures in order of importance.

(59) "Assessed value" means

(60) "Taxable value" means

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PART 9, CHAPTER 2

BUDGET AND APPROPRIATION

SECTION 47A-9-201. PURPOSE. It is the intent of the legislature to authorize and encourage the transition to a program and performance budgeting system.

SECTION 47A-9-202. BUDGET ADMINISTRATOR. The authority to prepare the budget is vested in the officer or officers specified in the form of government. Such officer or officers are designated the budget administrator.

SECTION 47A-9-203. TRANSITION. Local government budgets for fiscal year 1978 shall be adopted under the procedures provided in chapter 19, Title 16; chapter 14, Title 11; and rules promulgated by the department of community affairs; but budgets so adopted shall be administered under the provisions of this title. The mill levies adopted for fiscal year 1978 may exceed the statutory annual mill levy limits by twenty-five per cent (25%) to fund the three month transitional period.

SECTION 47A-9-204. FISCAL YEAR DEFINED. After September 30, 1978, the fiscal year of all local governments shall begin October 1, 1978 and end September 30. For purposes of transition, fiscal year 1978 shall consist of the fifteen (15) months from July 1, 1977 to September 30, 1978.

SECTION 47A-9-205. BUDGET INFORMATION AND ESTIMATES. (1) On or before June 1, the budget administrator shall issue a statement of governmental goals and objectives and obtain from each department head his estimate of resources and expenditures for the following fiscal year, departmental statement of goals and objectives and other information required for budget preparation.

(2) The department of community affairs shall report to each local government budget administrator on or before June 1 an estimate of all state shared revenues and grants that will be distributed to the local government in the ensuing local government fiscal year.

SECTION 47A-9-206. BUDGET PREPARATION. (1) Each local government shall adopt an annual budget which presents a complete financial plan for the ensuing fiscal year.

(2) The budget shall:

(a) set forth all proposed appropriations of each department or program including publicly owned utilities and enterprises;

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(b) set forth the appropriational and actual or estimated expenditures, resources, and deficits from the two (2) preceding fiscal years;

(c) set forth all debt redemptions and interest charges during the budget year;

(d) set forth proposed appropriations for capital projects to be undertaken or executed during the budget year;

(e) set forth all anticipated revenue and all other resources; and

(f) set forth proposed reserves.

(3) The budget administrator shall prepare a budget message to be submitted with the proposed budget. The budget message shall include:

(a) a statement of department goals and objectives and a statement of goals and objectives for each program;

(b) an evaluation of how effective each program has been in the past and the apparent reason for the level of success attained;

(c) a general summary setting forth the aggregate figures of the proposed budget and matching proposed appropriations and anticipated resources;

(d) a statement contrasting the proposed budget appropriations, resources, and expenditures, for the two (2) preceding fiscal years; and

(e) explanatory material which classifies the proposed program appropriations by fund, function, activity, object, and department and anticipated resources by source.

(4) Beginning with fiscal year 1981, the department of community affairs may, by rule, require that a local government's budget contain:

(a) at least three (3) alternative appropriation levels for each program with effectiveness measures and program size indicators detailed for each alternative funding level. One alternative funding level shall not exceed eighty per cent (80%) of that level authorized by the governing body for the preceding fiscal year; and

(b) a program and departmental priority listing encompassing all alternative funding levels.

(5) The budget may anticipate the collection of delinquent taxes, and anticipated tax revenue may be reduced by anticipated delinquent taxes.

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(6) (a) The budget may include a reserve for contingencies. This reserve may be appropriated only by resolution.

(b) The reserve may be expended only after the governing body has given notice, held a public hearing, and adopted a resolution authorizing the expenditure of the reserve.

SECTION 47A-9-207. SUBMISSION AND PUBLIC HEARING. (1) The budget administrator shall submit the proposed budget to the local government governing body on or before the second Monday of August.

(2) Upon receipt of the proposed budget, the governing body of the local government shall publish notice including:

(a) a statement that the proposed budget is available for inspection at the office of the local government;

(b) a summary of the proposed budget showing the balanced relationship between the total proposed expenditures and total anticipated revenue, anticipated mill levies, and comparative information for the two (2) preceding fiscal years;

(c) the date, time, and place of the public hearing on the proposed budget; and

(d) a statement that the governing body shall adopt a budget on or before the third Monday of September.

(3) The public hearing shall be held on or before the second Monday of September.

SECTION 47A-9-208. ADOPTION OF BUDGET. (1) The governing body shall review the proposed budget and at its discretion may revise the budget.

(2) After consideration the governing body shall, by resolution, adopt a budget on or before the third Monday of September.

(3) Expenditures authorized by the budget shall not exceed anticipated resources.

(4) The resolution adopting the budget shall be considered as the appropriation for the ensuing fiscal year.

SECTION 47A-9-209. FIXING LEVIES. On or before the third Monday of September and after the adoption of the budget, the governing body shall fix by resolution each property tax levy at a rate, not exceeding limits prescribed by law, that will raise the amount set out in the budget as the amount necessary to be raised by property taxes during the ensuing fiscal year.

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SECTION 47A-9-210. FILING OF BUDGET. (1) The chief executive shall file a certified copy of the adopted budget and mill levies with the department of community affairs and a certified copy of the mill levies with the county finance administrator on or before the Friday following the third Monday of September.

(2) The chief executive shall file a certified copy of all budget amendments, appropriation transfers, and emergency appropriations with the department of community affairs within thirty (30) days after their adoption.

SECTION 47A-9-211. UNEXPENDED APPROPRIATIONS. (1) After September 30 of each fiscal year, all unexpended appropriations, except encumbered monies, shall revert to the account from which originally appropriated and may not be expended until reappropriated.

(2) (a) When the governing body determines, by resolution, that the purpose for which a separate fund was established no longer exists, the governing body may eliminate the fund and the net resources shall be deposited as miscellaneous revenue to the general fund of the local government.

(b) The governing body shall give notice, hold a public hearing, and adopt a resolution prior to the elimination of a fund.

SECTION 47A-9-212. APPROPRIATION TRANSFERS. (1) (a) Within a program, the chief executive may revise and transfer appropriations.

(b) The chief executive shall notify the governing body in writing of the transfers prior to expending the transferred appropriation.

(c) The governing body may override the transfer by a resolution.

(2) The governing body, by resolution, may approve the reallocation of appropriations between departments and programs.

(3) The governing body, by resolution, may rescind or defer any appropriation in whole or in part. Rescinded appropriations may be transferred to the contingency fund.

SECTION 47A-9-213. BUDGET AMENDMENT. (1) The governing body may, by resolution, amend the budget to appropriate loans, grants, the proceeds of bond sales, and other revenues after the adoption of the budget.

(2) After notice, the governing body shall hold a public hearing on all proposed budget amendments.

(3) The revenues may not be expended until the budget amendment is adopted.

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SECTION 47A-9-214. EMERGENCY APPROPRIATIONS. (1) In cases of emergencies which were not foreseen at the time of the adoption of the budget, the governing body, by two-thirds (2/3) vote of the whole governing body may, by resolution, authorize additional appropriations.

(2) The authorizing resolution shall be published once and shall be included, with facts concerning the emergency, in the minutes of the meeting at which the governing body adopted the resolution.

SECTION 47A-9-215. FINANCING FOR EMERGENCY APPROPRIATIONS.

(1) In the case of an emergency appropriation, the governing body shall transfer from any unencumbered appropriation any resources which, in the judgment of the governing body, will not be needed for expenditures in the balance of the fiscal year to the fund from which the emergency expenditure is to be paid.

(2) If sufficient resources which can be transferred are not available to meet the authorized emergency appropriation, the governing body may register warrants. The total amount of the registered warrants shall not exceed the amount that can be raised by a two (2) mill levy. An appropriation to retire these registered warrants shall be included in the budget for the ensuing fiscal year.

SECTION 47A-9-216. ANNUAL REPORT. On or before December 1, the chief executive of the local government shall submit to the department of community affairs and the governing body a certified annual report in the form prescribed by the department of community affairs.

SECTION 47A-9-217. INTERIM BUDGET. In case the adoption of the budget resolution is delayed until after October 1, the governing body shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local government for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made shall be charged to the proper appropriations in the budget resolution.

SECTION 47A-9-218. LONG TERM BUDGETS. For the purpose of improving financial planning by local governments, the office of budget and program planning, and the state legislature, the department of community affairs may, by rule, after January 1, 1981, require local governments to annually develop long term budgets.

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PART 9, CHAPTER 3

LOCAL GOVERNMENT FINANCIAL ADMINISTRATION

SECTION 47A-9-301. GENERAL PROVISIONS. (1) The governing body shall, by ordinance, allocate the responsibilities for financial administration established by this chapter.

(2) All of the responsibilities of the finance administrator may be allocated to a single department or elected officer, or they may be allocated to separate department heads or elected officers.

(3) Any allocation for responsibility for financial administration shall provide for internal controls.

SECTION 47A-9-302. TRUST AND AGENCY. (1) The county governing body shall, by ordinance, provide for the administration of school finance functions that are a responsibility of the county.

(2) (a) The county governing body shall provide, by ordinance, for the collection and disbursement of state, municipal, and limited purpose local government monies as provided by law and ordinance.

(b) Trust and agency monies received by the county finance administrator for other governmental entities shall be transmitted on a timely basis.

(3) The county governing body may, by interlocal agreement, contract with municipalities to provide for municipal financial administration.

SECTION 47A-9-303. ACCOUNTING AND REPORTING. The finance administrator shall be responsible for:

(1) operation of the uniform budgeting, accounting, and reporting systems specified by the department of community affairs;

(2) providing information on financial transactions to the executive and the governing body at their request;

(3) keeping a record showing revenues received by the local government;

(4) keeping a record showing the resources appropriated by the adopted budget and the warrants drawn against the appropriations;

(5) keeping a record of the transfer of appropriations and of any authorized emergency appropriations;

(6) keeping records showing at all times the unexpended balance in each of the budgeted funds;

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(7) submitting a report to the governing body at its first monthly meeting showing the revenues and expenditures to date and the unexpended balance in each of the budgeted funds;

(8) submitting the annual financial report to the chief executive on or before November 1; and

(9) providing the budget administrator with information on resources, revenues, expenditures, and debt necessary for preparation of the proposed budget.

SECTION 47A-9-304. CASH MANAGEMENT. (1) Beginning with fiscal year 1981, the department of community affairs, may, by rule, require the finance administrator to prepare and submit to the chief executive a cash management plan by October 1 of each fiscal year.

(2) The department of community affairs shall provide local governments technical assistance on request in the administration of cash management plans.

SECTION 47A-9-305. TREASURY FUNCTIONS. (1) The finance administrator shall be responsible for, and may delegate the duties of:

(a) receiving and accounting for all money received by the local government;

(i) as authorized by law or ordinance, local government departments and officers may receive and account for money paid to the local government;

(ii) any officer or department shall provide a receipt for all money received; and

(iii) all monies collected by any other officer or department shall be deposited on a timely basis with the finance administrator;

(b) providing a receipt for all money received by the local government;

(c) custody of money and securities of the local government;

(d) disbursement of money of the local government upon proper authorization, including the payment of all warrants presented for payment in the order in which they are presented, when there are sufficient monies in the fund; and

(e) maintain the integrity of bond and other dedicated funds.

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(2) The county finance administrator shall be responsible as an agent for:

(a) receiving and accounting for all money paid to the county for state, municipal, limited purpose local government, school district, and other purposes;

(b) providing a receipt for all money paid to the county for state, municipal, limited purpose local government, school district, and other purposes;

(c) custody of state, municipal, limited purpose local government, school district, and other monies and securities received by the finance administrator; and

(d) disbursement of state, municipal, limited purpose local government, school district, and other monies upon proper authorization.

(3) The municipal finance administrator shall be responsible as an agent for:

(a) receiving and accounting for all money paid to the municipality for state, county, limited purpose local government, and other purposes;

(b) providing a receipt for all money paid to the municipality for state, county, limited purpose local government, and other purposes;

(c) custody of state, county, limited purpose local government, and other monies and securities received by the finance administrator; and

(d) disbursement of state, county, limited purpose local government, and other monies upon proper authorization.

SECTION 47A-9-306. DEPOSIT AND INVESTMENT OF PUBLIC FUNDS. (1) The financial administrator of each local government shall deposit all public monies in his possession or under his control in a bank, building and loan association, or savings and loan association subject to state or national inspection and designated by resolution by the governing body.

(2) The finance administrator may provide for the investment of public monies not necessary for immediate use by the local government in any of the following manners:

(a) in time or savings deposits with any bank, building and loan association, or savings and loan association subject to state or national inspection. Such deposits may be made either:

(i) on a pro rata basis, based on the amount of property tax

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paid in the preceding year, in all such institutions which are willing to accept public monies and are located within the local government; or

(ii) on the basis of bids by the institutions within the local government, provided that if there are less than two (2) institutions within the county, the governing body may solicit bids from institutions in adjoining counties. If an institution located within the local government agrees to pay the same rate of return as an institution without the local government, the funds shall be deposited with the institution within the local government;

(b) in any of the securities enumerated in section 79-307 [79-310]; or

(c) in the state investment fund as provided in section 79-311.

(3) (a) No deposits of public monies may be made in any bank, building and loan association, or savings and loan association until the governing body has approved securities equal to the amount of deposits in excess of the amount insured by law. [federal deposit insurance corporation and federal savings and loan insurance corporation]

(b) The governing body shall approve as security only items enumerated in section 79-307.

(c) Securities for local government deposits shall be delivered to the financial administrator of the local government, except that when negotiable securities are furnished, the securities may be placed in trust and the trustee's receipt may be accepted when the receipt is in favor of the local government and the state of Montana. The department of community affairs shall approve the form for the receipts, the quality of securities, and their release.

(d) All negotiable securities must be properly assigned or endorsed in blank.

(e) The governing body upon acceptance and approval of securities shall make a complete entry of the acceptance and approval in the minutes and shall reapprove the securities at least quarterly thereafter.

(4) Interest on local government monies invested shall be taken up into the accounts in the manner provided by ordinance.

(5) When public monies have been invested or deposited as provided, neither the finance administrator nor the governing body or its members shall be liable for any loss occasioned through means other than their neglect, fraud, or dishonorable conduct.

(6) The department of community affairs and the department of administration shall provide a local government assistance on request in the investment of public monies.

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SECTION 47A-9-307. PETTY CASH. (1) The finance administrator may establish a petty cash fund, not to exceed two hundred dollars (\$200), for each department for the purpose of paying incidental expenses.

(2) Each department shall provide the finance administrator an accounting of the expenditures from the account on a monthly basis. The account may be replenished in the discretion of the finance administrator.

SECTION 47A-9-308. EXPENDITURES. (1) The finance administrator of each local government shall be responsible for the proper expenditure of appropriations.

(2) No contract, requisition, purchase order, or agreement requiring the payment of money may be made unless an appropriation appears in the approved budget and a sufficient unencumbered balance remains in the appropriation.

(3) All verified invoices shall be paid by warrant. The form of the warrant shall be approved by the department of community affairs.

(4) All invoices shall be verified prior to their submission to the finance administrator by:

(a) the claimant that the goods or services have been delivered to the local government; and

(b) the officer or employee charged with administering that portion of the appropriation to which it is to be charged, that goods or services were received by the local government.

(5) All warrants shall be signed and issued by the finance administrator and countersigned by the chief executive or by the chairman in the commission form.

(6) (a) When any warrant is presented to the finance administrator for payment, and there are insufficient monies in the funds in the account on which the warrant was drawn, he shall register the warrant.

(b) The finance administrator shall endorse on the warrant "not paid for insufficient monies", the date of presentation, and sign his name. From the date of presentation until it is called for payment, the warrant shall bear interest at a rate fixed by resolution.

(c) The finance administrator shall record the date of presentation, the number, the date of the warrant, to whom payable, the fund on which drawn, and the amount of the warrant.

(d) Registered warrants shall be paid in order of registration, and no subsequent warrants may be paid from the same fund unless all registered warrants are paid.

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(e) When there are sufficient monies in the local government treasury applicable to the payment of any registered warrants, the finance administrator shall give notice:

(i) that he is ready to pay the registered warrants; and

(ii) give the numbers of the warrants to be paid. From the time of notice the registered warrants will cease to draw interest.

(f) Warrants issued for the payment of the local government payroll shall be drawn by the finance administrator on the order of the chief executive.

SECTION 47A-9-309. PURCHASING. (1) (a) All local government purchases of any kind, except for purchases made from petty cash, shall be by purchase order. Purchase orders may be issued directly, following solicited bids, or following public bids.

(b) A purchase order may be issued by the chief executive or by such other officer or employee of the local government whom the chief executive designates as the purchasing administrator.

(2) Purchase orders may be issued directly for purchases under five thousand dollars (\$5,000).

(3) (a) Purchase orders may be issued for purchases of more than five thousand dollars (\$5,000) and less than ten thousand dollars (\$10,000) only after solicitation of bids.

(b) Any person, firm, or corporation which wishes to receive solicitations for bids shall file with the governing body of the local government a request for solicitations stating which items or types of items it is interested in bidding on. Whenever an item listed in a request for solicitations is to be purchased by solicited bid, all persons, firms, and corporations shall be notified.

(c) If a person, firm, or corporation which has requested notice of solicitations fails for a period of one year to respond to any solicitations, the request for solicitations may be cancelled by the local government.

(d) The local government may solicit bids from other persons, firms, and corporations which have not requested solicitations. Except as provided in section 47A-9-310 and subject to the governing body's right to reject any or all bids, the purchase shall be made from the lowest and best responsible bidder. If the lowest bid is not accepted, the reasons shall be entered in the minutes.

(4) (a) Purchase orders may be issued for purchases of more than ten thousand dollars (\$10,000) only after public bid.

(b) The governing body shall give notice calling for bids on all purchases required to be by public bid. The notice shall describe in general terms the item or items to be purchased, state where a copy of the detailed description may be obtained, and state the last date on which the bid will be accepted.

(c) The purchase shall be made from the lowest and best responsible bidder subject to the requirements of section 47A-9-310, except that the governing body may reject any or all bids. If the lowest bid is not accepted, the reasons shall be entered in the minutes.

(5) The governing body may, in its discretion, use solicited bids for purchases of less than five thousand dollars (\$5,000) and public bids for purchases of less than ten thousand dollars (\$10,000).

(6) Local governments shall not circumvent the provisions of this section by dividing into several parts a purchase which constitutes an integral whole.

(7) Bids and tenders shall comply with section 6-501.

(8) The governing body may, by resolution, approve the purchase of an item or items of any kind from federal and state agencies and local governments.

(9) The purchasing administrator may enter into an agreement with the department of administration to utilize the services of the state purchasing bureau.

(10) A contract for the rental or lease of any item or items which provides that after a certain fixed amount has been paid on the contract the item or items becomes the property of the local government shall be considered a contract for the purchase of the item or items.

SECTION 47A-9-310. MONTANA CONTRACTORS, MATERIALS AND LABOR.

(1) In awarding contracts, a local government shall award the contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest responsible bidder who is a non-resident of the state.

(2) In making purchases, a local government shall purchase equipment, materials, or supplies manufactured or produced in this state by Montana industry and labor, provided that the cost is no more than three percent (3%) higher than that of such equipment, materials, or supplies not so manufactured or produced, and provided that such equipment, materials, or supplies are comparable in quality and performance.

(3) Any contract awarded by a local government shall contain a provision that Montana labor and products produced or manufactured in the state by Montana labor and industry shall be used whenever the labor or the products are available and comparable in skill or in price, quality, and performance. Failure to comply with this subsection shall disqualify the contractor from future contracts with the state of Montana and its subdivisions for a period of two years.

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(4) Montana labor shall be hired subject to the terms and conditions set out in section 41-701.

(5) The residency of bidders shall be determined by the department of revenue as provided in section 82-1925.1.

SECTION 47A-9-311. EXEMPT PURCHASES. (1) Personnel may be employed in the manner provided in part 4, chapter 2 of this title.

(2) Legal, engineering, and other professional and technical services may be purchased without complying with section 47A-9-309.

(3) Real estate may be purchased without complying with section 47A-9-309.

SECTION 47A-9-312. PROPERTY CONTROL. (1) The chief executive of the local government shall annually conduct a physical inventory of the fixed assets of the local government.

(2) The department of community affairs may establish, by rule, the form of the inventory and the assets to be included in it.

SECTION 47A-9-313. SALE AND LEASE OF PROPERTY. (1) A local government may sell, lease, exchange, or otherwise dispose of any interest in either real or personal property acquired other than by tax deed.

(2) The governing body shall approve, by resolution, all sales, leases, exchanges, or other dispositions of local government property.

(3) (a) If the property interest to be sold, leased, exchanged, or otherwise disposed of has an estimated value of more than five hundred dollars (\$500), the governing body shall have the property appraised and give notice of the sale, lease, exchange, other disposition, the terms, and that bids will be accepted on the property.

(b) At the regular meeting of the governing body following the completion of notice, the governing body shall examine the bids offered and order the property sold or leased to the highest or best responsible bidder. The governing body may reject any or all bids.

(4) Subsection (3) shall not apply to a sale, lease, or exchange to or between two political subdivisions of the state or between a local government and a state, or federal agency, or to a sale or exchange which is made as a part of a contract to purchase similar property by the local government, or to a lease which is approved by a two thirds (2/3) vote of the entire governing body.

(5) The governing body may establish, by ordinance, a schedule of rents and charges for the use of public property.

(6) A local government shall not circumvent the provisions of this section by dividing into several sales any transaction which constitutes an integral whole.

(7) Proceeds from the sale, lease, or other disposition of property shall be taken up into the accounts as provided by ordinance.

SECTION 47A-9-314. EXCESS EXPENDITURES NOT LIABILITY OF LOCAL GOVERNMENT; PERSONAL LIABILITY OF OFFICER. Liabilities incurred in excess of any of the budget appropriations are not a liability of the local government; but the official or employee making or incurring the expenditure in an amount known by him to be in excess of the unencumbered balance of the appropriation against which it is drawn is liable personally and upon his official bond.

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PART 9, CHAPTER 4

SOURCES OF REVENUE FOR LOCAL GOVERNMENTS
WITH GENERAL GOVERNMENT POWERS

SECTION 47A-9-401. PURPOSE. It is the purpose of this chapter to grant local governments with general government powers authority to finance local government services and facilities.

SECTION 47A-9-402. FUNDING OF MANDATED STATE SERVICES AND FACILITIES. (1) Any law enacted by the legislature after July 1, 1977 which imposes additional costs on a local government to provide a service or facility must provide a specific means to finance the service or facility other than the all purpose mill levy.

(2) The legislature may provide for special mill levies or remission of monies by the state of Montana to local governments; however, any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of monies by the state of Montana, the remission shall bear a reasonable relationship to the cost of providing the service or facility.

(3) The local government may, by resolution, refuse to comply with or enforce any law which does not meet the requirements of this section.

(4) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that the legislation shall do so expressly.

SECTION 47A-9-403. SOURCES OF REVENUE. Local governments with general government powers are authorized to finance services and facilities from:

(1) taxes;

(a) The governing body may impose only those taxes authorized by state law.

(b) The taxes shall be levied and collected as provided by state law.

(2) licenses and permits;

(a) The governing body may, by ordinance, provide for the licensing of any activity, event, industry, business pursuit, profession, or occupation and may issue permits for activities subject to local government regulation.

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(b) The governing body shall establish, by ordinance, the amount for each kind or class of license or permit, the manner in which licenses and permits are issued and revoked, and the penalties for failure to comply with license and permit requirements.

(3) intergovernmental revenues;

(a) The governing body may receive, budget, and appropriate grants, shared revenues, and payments in lieu of taxes.

(b) Intergovernmental revenues may be expended only for specified purposes if any.

(4) charges for services;

(a) The governing body may, by ordinance, impose a charge for any service which it provides.

(b) The charges may be used to recover all or any part of the cost of providing the service. The governing body may establish differing charges for various classes of users.

(c) Subject to approval by the public service commission when required, service charges shall be established at a rate or rates which are reasonably calculated to recover no more than the cost of providing the service. In determining the cost of providing a service, the governing body may include such items as actual operating expenses, debt retirement, replacement of equipment or physical plants, and reserves.

(5) fines and forfeitures;

(a) The governing body may, by ordinance, establish fines for the violation of ordinances.

(b) The governing body may receive, budget, and appropriate fines and forfeitures authorized by ordinance or state law.

(c) The governing body may, by ordinance, provide for the forfeiture of performance bonds and other deposits.

(6) interest earning;

(a) The governing body may budget and appropriate interest earnings on public monies.

(b) Interest earnings shall be credited to a fund or funds as provided by ordinance.

(7) rents and royalties;

(a) The governing body may, by ordinance, establish rents and rent schedules for local government equipment, facilities, and property.

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(b) The governing body may budget and appropriate rents and royalties due the local government.

(8) special assessments;

(a) The governing body may levy a special assessment against the taxable property within a service district or local improvement district.

(b) The special assessment within a service district shall not exceed an amount sufficient to pay the cost of the service together with the amount paid by district taxes, service charges, appropriations of the general resources, and other available revenue.

(c) The special assessment within a local improvement district shall not exceed the amount established in the payment plan adopted under section 47A-6-108.

(9) sales of and compensation for loss of fixed assets;

(a) The governing body may receive, budget, and appropriate from the sale of fixed assets and proceeds from compensation for loss of fixed assets.

(b) Compensation for loss of fixed assets shall be deposited to the fund from which the lost asset was purchased.

(10) public enterprises charges;

(a) The governing body may receive, budget, and appropriate proceeds of public enterprises only for enterprise purposes, except as provided herein.

(b) The governing body may, by ordinance, provide for the reimbursement of public enterprise costs subsidized by general government revenue.

(c) Any monies not necessary for the operation, maintenance, or service of debt may, by ordinance, be transferred to the general fund.

(11) contributions and donations from private sources;

(a) The governing body may receive, budget, and appropriate contributions and donations from private sources.

(b) The governing body may comply with any conditions of the contribution or donation that is not contrary to the public interest.

(12) premiums on bonds sold and proceeds from sale of bonds;

(a) The governing body may receive, budget, and appropriate premiums on bonds sold, proceeds from the sale of bonds, and accrued interest, if any.

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(b) Proceeds from bond premiums, the sale of bonds, and accrued interest, if any, shall be expended only for the purposes for which the bonds were authorized or for the retirement of the debt.

SECTION 47A-9-404. PROPERTY TAXES. (1) Local governments are granted the authority to impose ad valorem taxes on real and personal property within the boundaries of the local government.

(2) Property taxes shall be levied against the taxable value of the property as established and equalized by the state.

(3) The governing body of a local government with general government powers is authorized to levy the following property taxes each fiscal year:

(a) (i) for counties, an all-purpose tax not exceeding sixty-five (65) mills;

* (ii) for municipalities, an all-purpose tax not exceeding sixty-five (65) mills [seventy-five (75) mills];

(b) for counties, a tax for [the poor fund] social services not exceeding thirteen and one-half (13-1/2) mills;

(c) for counties, a tax for constructing, maintaining, and improving public roadways not exceeding fifteen (15) mills. This tax shall not be levied in municipalities unless the governing body of the municipality has authorized the county to levy the tax in lieu of a municipal appropriation from the all-purpose tax levy for public roadways;

(d) a tax for paying the interest and principal due during the fiscal year and reserves as necessary on each series or issue of outstanding general obligation bonds. The levy must be high enough to raise an amount sufficient to pay all interest and principal of the bonds as will become due and payable during the ensuing fiscal year and to establish reserves as necessary;

(e) a tax for paying judgment against the local government if there is insufficient money available from the all-purpose tax to pay the judgment. Payments for judgment may be pro-rated for a period of three (3) years from its presentation;

(f) a tax to maintain a local improvement district revolving fund at an amount not exceeding five per cent (5%) of the principal and interest on outstanding local improvement bonds;

*[The municipal all-purpose mill levy limit should be increased to seventy-five (75) mills if the local option taxes in section 47A-9-405 to 47A-9-407 are not approved or if subsections (g), (j), (m) of this section are eliminated.]

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*(g) a tax to pay premiums for comprehensive insurance as authorized in section 82-4309;

(h) a tax not exceeding four (4) mills for the fire department relief associate fund when the cash balance of the fund is less than two per cent (2%) of the taxable value of property;

(i) a tax not exceeding three (3) mills for the police reserve fund if the obligations against the fund cannot be met;

*(j) a tax for payment of group insurance premiums for fire fighters and police officers, not exceeding four (4) mills;

(k) a tax to finance services provided in subordinate service districts levied only on property within the district;

(l) a tax not exceeding the amount or the mill levy limit established by vote of the electors on a voted mill levy approved by the electors in a special or general election; and

*(m) a tax not exceeding three (3) mills for emergency purposes as authorized in section 47A-9-215.

SECTION 47A-9-405. LOCAL INCOME TAX. (1) (a) Any county with general or self-government powers is authorized to impose a local income tax on its residents and on all other persons earning or receiving income from activities carried out in the county not exceeding twenty per cent (20%) of the state income tax liability.

(b) The income tax may be imposed only after an affirmative vote of the qualified electors of the county.

(c) The question may be presented to the qualified electors of the county by:

*[Subsections (g), (j), and (m) could be eliminated and obligations paid from the all purpose fund.]

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- (i) a petition of the electors of the county; or
- (ii) a resolution of a governing body of a municipality of the county; or
- (iii) a resolution of the governing body of the county.
- (d) The question shall be presented in substantially the following form:

for the local government income tax

against the local government income tax

(2) (a) "Resident". A resident of a county is an individual who is domiciled in that county and does not maintain a permanent place of abode elsewhere and spends in the aggregate not less than thirty (30) days of the taxable year in the county; or who is not domiciled in the county but maintains a permanent place of abode in the county and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in the county.

(b) "Non-resident". A non-resident is anyone who is not a resident.

(c) "Persons". (To be defined in conformity with the state income tax code.)

(3) (a) The rate of the income tax shall be determined by ordinance. The governing body of the county shall certify the rate of the tax to the department of revenue on or before October 1.

(b) The governing body of a county imposing an income tax may suspend for any fiscal year the collection of the county income tax only after first giving at least one hundred twenty (120) days notice of the suspension to the department of revenue. The suspension shall be effective the first day of the next calendar year. The suspension shall not impair the authority of the county to impose the tax in subsequent years.

(4) The income tax authorized under the provisions of this act in any county shall be administered by the department of revenue under rules adopted by the department. Monies collected under the local income tax shall be accounted for separately and shall be paid into a separate fund to be distributed to the counties imposing the tax after deducting an amount no more than _____ per cent (%) to cover necessary costs incurred by the department of revenue in administering the local income tax. The rules and regulations promulgated in accordance with the state law shall apply to the local income tax except when, in the judgment of the department of revenue, the rules would be inconsistent or not feasible of proper administration. The department of revenue is authorized to make refunds to taxpayers pursuant to this section.

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(5) In the case of a non-resident, the local income tax liability shall be limited solely to his place of employment, provided such jurisdiction imposes a local income tax. One-half (1/2) of the tax imposed by the jurisdiction of employment shall be credited by the department of revenue to the non-resident's place of residence provided the jurisdiction also imposes the local income tax. In the event the non-resident lives in a county that does not impose a tax but earns income in a county that does impose a tax, the department of revenue shall credit the total net proceeds of the non-resident's tax liability exclusively to the jurisdiction of employment. In the event the non-resident works in a county that does not impose a local income tax, but resides in a jurisdiction which does impose such a tax, the department of revenue shall credit the proceeds of the local income tax exclusively to the jurisdiction of residence.

(6) (a) All revenues collected pursuant to this section shall be credited to a special local income tax fund which is hereby established in the state treasury. After deducting the amount of refunds made, a reserve for expected or anticipated refunds, and the costs of administering the tax, the remaining sums shall be distributed by the department of community affairs to the county of origin on a quarterly basis.

(b) The county finance administrator shall distribute the revenues received from the local income tax to the local governments within the county on the following basis: [Method to be determined .]

SECTION 47A-9-406. MOTOR VEHICLE LICENSE FEES. (1) A governing body of a local government may, by ordinance, impose a license fee up to fifty per cent (50%) of the motor vehicle license fees established in section 53-122.

(2) The registrar of motor vehicles shall, by rule, provide for the collection by counties of the license fee and the distribution of proceeds to counties and municipalities imposing the license fee.

(3) The revenue shall be used for the construction, repair, and maintenance of all public roadways within the local government boundaries which are not either state or federal highways.

SECTION 47A-9-407. SELECTIVE EXCISE TAXES. A governing body of a local government with general or self-government powers may, by ordinance, impose the following selective excise taxes:

(1) (a) a tax on the use of hotel or motel facilities, as defined in section 34-302 (d), not exceeding one dollar (\$1) per day for each occupant or ten per cent (10%) of the room rental.

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(b) The department of revenue shall, by rule, provide for the administration and the collection, by counties or the department of revenue, of this tax.

(2) (a) a tax on the purchase of electricity, metered or bottled gas, natural liquified petroleum gas or manufactured gas, fuel oil, water service, telephone service, telegraph service, and cable television service, not exceeding one per cent (1%) of the sale price to ultimate consumer;

(b) The department of revenue shall provide, by rule, for the administration and collection of this tax by the utility or service provider.

(3) a tax on the receipts of a franchise not exceeding the amount specified in the ordinance granting the franchise; and

(4) (a) a tax on the purchase of fuels taxable under Title 84, chapter 18, not exceeding an amount equal to two cents (\$.02) for each gallon of fuel;

(b) The department of revenue shall provide, by rule, for the administration and collection of the tax.

(c) The proceeds shall be used for the construction, repair, and maintenance of all public roadways within the local government boundaries which are neither state nor federal highways.

SECTION 47A-9-408. INTERGOVERNMENTAL REVENUES. (1) The department of community affairs shall distribute to local governments the following state grants, shared revenues, and payments in lieu of taxes: [The monies will be collected as provided by existing state law, and distributed under existing formulas, but the distribution would be centralized in the department of community affairs. The following programs will probably be included in this section:

(a) liquor tax apportionment from the department of revenue;

(b) beer tax from the state treasurer;

(c) gasoline tax from the department of highways;

(d) insurance premium apportionment from the state auditor;

(e) coal tax from the department of community affairs;

(f) solid waste disposal (junk vehicle) from the department of health;

(g) payments in lieu of taxes on state lands from the department of state lands;

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(h) county attorneys' salaries from the state auditor;
(i) county health services from the department of health;
(j) transportation and board of prisoners from the department of administration;

(k) urban transportation funds from the department of community affairs; and

(1) water pollution grants from the department of health and environmental sciences.]

(2) All state agencies shall notify the department of community affairs of any state or federal grants, shared revenues, or payments administered by the agency and distributed to a local government.

(3) The department of community affairs shall review and evaluate all state aid programs to determine the extent that they meet fiscal, administrative, and program objectives.

(4) The department of community affairs shall evaluate and provide information on federal aid programs, including direct federal local aid programs, in terms of their compatibility with state objectives and their fiscal and administrative impact on state and local programs.

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PART 9, CHAPTER 5

DEBT MANAGEMENT

SECTION 47A-9-501. PURPOSE. It is the purpose of this chapter to implement Article VIII, sections 10 and 11 of the Montana constitution by establishing limits on local government debt and providing procedures for increasing debt and utilizing proceeds from bond sales.

SECTION 47A-9-502. DEFINITIONS. Unless otherwise provided or the context otherwise requires, as used in this title:

(1) "Bonds" means obligations of a local government for the payment of money in specified installments over a fixed period of time.

(2) "General obligation bonds" means bonds which are secured by the full faith and credit of a local government pledged for the principal and interest.

(3) "Revenue bonds" means bonds of a local government which are secured by the revenues of a project pledged to payment of the principal and interest on the bonds.

(4) "Local improvement bonds" means bonds which are payable solely from the proceeds of an assessment levied for a local improvement district.

(5) "Project" means any combination of the following:

(a) any construction, leasing, acquisition, extraordinary maintenance, or repair;

(b) cost of the local government in the supervision and administration of the project;

(c) any legal work, preliminary studies, surveying, planning, testing or design work, and project supervision and administration;

(d) any lands or rights in land to be acquired;

(e) any furnishings, machinery, apparatus, or equipment normally classified as capital items, but such items must have a useful life of five (5) years or more if financed separately and not as a part of a construction project;

(f) the local government's share of the cost of a project undertaken jointly with one or more local governments, the state, or the federal government;

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(g) the cost of damages caused by the construction of the improvement; and

(h) the cost of interest on bonds issued to finance the project.

(6) "Series" means all the bonds or notes to be sold and delivered at one time in respect to one (1) project or to any two (2) or more projects which have been combined for purposes of financing or where the bonds or notes have been combined for sale as provided in this act.

SECTION 47A-9-503. CAPITAL IMPROVEMENT PROGRAM. (1) A local government may establish and amend, by ordinance, a capital improvement program which anticipates needed expenditures for acquisition or replacement of property, plant, or equipment which costs in excess of five thousand dollars (\$5,000) and has a life expectancy of five (5) years or more.

(2) A capital improvement program may be financed by:

(a) allocating not more than five per cent (5%) of each fund included in the capital improvement and replacement program to that fund's credit in the capital improvement program fund; and

(b) any other resources available to the local government.

(3) The ordinance establishing the capital improvement program shall state:

(a) the purposes for which the fund is created;

(b) the approximate periods of time during which the monies are to be accumulated for each purpose;

(c) the approximate amounts to be accumulated for each purpose; and

(d) the sources from which monies for each purpose will be derived.

(4) Appropriations from the capital improvement program fund shall be included in the annual budget.

(5) After January 1, 1981, the department of community affairs may, by rule, require local governments to adopt capital improvement programs for acquisition of property, facilities, or equipment costing in excess of five thousand dollars (\$5,000) with a life expectancy of five (5) years or more.



SECTION 47A-9-504. DEBT INCURRED WITHOUT A VOTE. A governing body, by resolution, may incur debts up to a total of forty thousand dollars (\$40,000) for any service or function authorized by this title without submitting the question to the electors.

SECTION 47A-9-505. INSTALLMENT PURCHASES. (1) When the amount to be paid on a contract for a capital acquisition exceeds five thousand dollars (\$5,000), the governing body may provide for payment in installments extending over not more than five (5) years.

(2) No installment contract may be entered into unless there is an unexpended balance of appropriation in the budget for the current fiscal year available and sufficient to pay the portion of the contract price that is payable during the current fiscal year; and the budget for each following year, in which any portion of the purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Installment contracts of more than five (5) years may be entered into if approved by a vote of the electors.

SECTION 47A-9-506. DEPARTMENT OF COMMUNITY AFFAIRS - RULE MAKING, REPORTING AND TECHNICAL ASSISTANCE. (1) The department of community affairs shall, by rule, prescribe bond signature requirements, the manner of execution, and the form of bonds, bond authorizing ordinances, and notices.

(2) The department of community affairs shall approve, prior to submission to the electors, all proposed local government bond issues, except for local improvement bonds, and may reject any proposed issue which would result in exceeding the local government's debt limit or which is technically deficient. It may also issue an adverse report on any bond issue which it feels is, in view of existing conditions, ill advised.

(3) The department of community affairs and/or the department of administration may provide a local government with technical advice and assistance, on request, in planning, preparing, presenting, and issuing any bond authorized by this title.

(4) The department of community affairs and/or the department of administration may [shall] act as the agent of the local government in marketing local government bonds issued under this title.

(5) All general obligation, revenue, and local improvement district bond issues shall be submitted to the attorney general prior to sale as provided in sections 82-410 to 82-413.

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(6) The governing body may retain private technical advice and assistance in planning, preparing, presenting, marketing, and issuing any bond authorized by this title.

(7) The governing body may designate one or more banks or trust companies in the United States as the fiscal agency for the local government for the payment of interest and principal on bonds issued by the local government.

SECTION 47A-9-507. APPLICATION OF THIS TITLE TO PENDING AND OUTSTANDING BONDS. (1) Where prior to the enactment of this title proceedings for the issue and sale of bonds by any local government under its powers as set forth in the Revised Codes of Montana, 1947, have been commenced or completed in accordance with the provisions of the Revised Codes of Montana, 1947, the proceedings shall be held valid and sufficient and the completion of the proceedings under the authority of this title is hereby authorized, and the proceedings when completed shall be of the same force and effect as if the provisions of this title had been in effect when the proceedings were commenced.

(2) All of the provisions of this title with reference to the payment of principal and interest of bonds, redemption and payment thereof, investment of debt service funds, levy of taxes for payment of principal and interest, maintenance of separate sinking and interest funds, and all other provisions of this title which can be made applicable thereto shall apply to all bonds heretofore lawfully issued by any local government under any law or laws of this state, and which bonds shall be outstanding at the time this title takes effect.

SECTION 47A-9-508. DEBT LIMITS. (1) No county may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed two and one-half per cent (2-1/2%) of the assessed value of property in the county, except that a county may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed ten per cent (10%) of the assessed value of property in the county for purposes of a county water distribution and supply system, sewage collection and treatment system, or a public transportation system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

(2) No municipality may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed five per cent (5%) of the assessed value of property in the municipality, except that a municipality may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed fifteen per cent (15%) of the assessed value of property in the municipality for purposes of a municipal water distribution and supply system, a sewage collection and treatment system, or a public transportation system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

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(3) No consolidated government may issue general obligation bonds which, with all outstanding general obligation bonds, will exceed seven and one-half per cent (7-1/2%) of the assessed value of property in the consolidated government, except that a consolidated government may issue additional general obligation bonds which, with all outstanding general obligation bonds, will not exceed fifteen per cent (15%) of the assessed value of property in the consolidated government for purposes of a consolidated government water distribution and supply system, sewage collection and treatment system, or public transportation system. The additional debt may be utilized only to provide funds for the cost of capital facilities for any or all of the foregoing purposes.

(4) General obligation bonds issued for school purposes shall not be included as a part of a local government's outstanding general obligation bonds for purposes of determining whether or not the debt limit of the local government has been reached. The bonds shall be limited as provided in section .

(5) The assessed value of property in a local government shall be ascertained by the last assessment for state and county taxes.

SECTION 47A-9-509. GENERAL OBLIGATION BONDS. (1) A local government may, in the manner provided by this chapter, issue general obligation bonds to finance a project to provide any service or facility authorized by this title.

(2) General obligation bonds may be issued only after the electors have approved a bond authorization ordinance as provided in section 47A-9-510.

(3) A bond authorization ordinance may be submitted to the electors either through the adoption of the ordinance by the governing body or by initiative of the electors.

(4) If the bond authorizing ordinance is submitted to the electors by initiative, the governing body shall carry out all acts required to comply with section 47A-9-510.

(5) General obligation bonds may not be issued for a term exceeding twenty (20) years, except general obligation bonds for water, sewer, and storm sewer systems may be issued for a term not to exceed forty (40) years.

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SECTION 47A-9-510. ELECTION ON GENERAL OBLIGATION BOND.

(1) A local government may issue general obligation bonds only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election.

(2) Whenever the question of issuing general obligation bonds is submitted to the electors of a local government, not less than forty per cent (40%) of the electors entitled to vote on the question must vote on the question, otherwise the proposition shall be rejected.

(3) The election shall be conducted as provided in section 47A-3-608.

SECTION 47A-9-511. TERMS OF SALE AND PAYMENT (1) After approval of the bond authorizing ordinance by the qualified electors, the governing body shall, by resolution, fix the date of issue, denominations, maturities, place and manner of payment, redemption terms, and registration privileges.

(2) The full faith and credit of the local government is pledged for the payment of principal and interest on general obligation bonds. The local government shall levy an ad valorem tax at a millage sufficient to pay the principal and interest which will fall due during the fiscal year and to establish reserves as necessary.

(3) General obligation bonds issued for acquiring, constructing, improving, and equipping a revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation.

SECTION 47A-9-512. PERFORMANCE OF WORK. The governing body may perform the work specified in the bond authorizing ordinance in the improvement plan or may let the work to bid under the procedures of section 47A-9-308.

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SECTION 47A-9-513. GENERAL OBLIGATION BONDS ISSUED WITHOUT A VOTE. A governing body may adopt a bond authorizing ordinance to issue general obligation bonds without submitting the question to the electors for the following purposes:

(1) for the purpose of enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(2) for the purpose of funding, paying, and retiring outstanding warrants when there is not sufficient money in the accounts against which warrants are drawn to pay and retire the warrants, and the levying of taxes sufficient to pay and retire the warrants within a period of three (3) years would, in the judgment of the governing body, work a hardship and be an undue burden on the taxpayers of the local government;

(3) for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the local government in a court of competent jurisdiction when there are not sufficient funds available to pay the judgment by an annual tax levy of ten (10) mills levied on all the taxable property within the local government through a period of three (3) years. The resolution providing for the issue of the bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the governing body and the judgment creditor;

(4) whenever the total indebtedness exceeds the debt limit, and the governing body finds and determines that the local government is unable to pay and discharge the indebtedness in full, the governing body shall have the power and authority to negotiate with the holders of the bonds of the local government for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, and to enter into an agreement or agreements and to issue refunding bonds for the amount agreed upon. The plan agreed upon between the governing body and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

SECTION 47A-9-514. REVENUE BONDS. (1) A local government may, in the manner provided by this title, issue revenue bonds to finance a project to provide any revenue producing service or facility authorized by this title.

(2) (a) No election is required to authorize the issue and sale of revenue bonds.

(b) A revenue bond authorizing ordinance may be submitted to the electorate by the governing body or by initiative or referendum.

(c) If the revenue bond authorizing ordinance is submitted to the electors, the election shall be conducted as provided in section 47A-3-608, and approval by a majority of those voting on the question is required for adoption.

(3) Revenue bonds may not be issued for a term exceeding forty (40) years.

(4) The governing body shall authorize the issue of revenue bonds by ordinance which shall fix the date of issue, denominations, maturities, place and manner of payment, redemption terms, and registration privileges and which may include those of the following agreements as the governing body considers advisable:

(a) the purposes to which the proceeds of sale of the bonds may be applied and the use and disposition thereof;

(b) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(c) the transfer from the general funds of the local government to the undertaking, an amount equal to the cost of furnishing the local government with the services, facilities, and commodities of the undertaking;

(d) the issuance of other or additional bonds payable from the revenue of the undertaking;

(e) the operation and maintenance of the undertaking;

(f) the insurance to be carried and the use and disposition of insurance monies;

(g) financial records and their inspection and audit;

(h) the relative priority of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times;

(i) the terms and conditions upon which the bondholder, or any proportion of them, or any trustee shall be entitled to the appointment of a receiver by the district court; the district court shall have jurisdiction in the proceedings and may authorize the receiver to enter and take possession of the undertaking, operate and maintain it, prescribe rates, fees, or charges, subject to the approval of the public service commission, and collect, receive and apply all revenue of the undertaking in the same manner as the local government itself might do.

(5) The provisions of this title and any ordinance or ordinances shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

SECTION 47A-9-515. PERFORMANCE OF WORK. The governing body may perform the work specified in the revenue bond authorizing ordinance or may let the work to bid under the procedures of section 47A-9-308.

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SECTION 47A-9-516. PAYMENT ON REVENUE BONDS. (1) A local government which has issued revenue bonds to finance a revenue producing facility may use monies received from the facility in the following manner:

(a) to pay when due all bonds and interest for the payment of which the revenue is pledged, charged, or otherwise encumbered;

(b) to provide for all costs of operation and maintenance of the undertaking;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon for the payment of which the revenue of the undertaking is pledged, charged or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of the undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the undertaking; and

(e) to provide for reserves.

(2) No local government may transfer the revenue of the undertaking to its general fund until adequate provision has been made for the foregoing purposes.

(3) No holder or holders of any revenue bonds shall ever have the right to compel any exercise of taxing power of a local government to pay revenue bonds or the interest thereon.

SECTION 47A-9-517. UNDERTAKINGS TO BE SELF-SUPPORTING. A governing body issuing revenue bonds pursuant to this title shall, subject to the approval of the public service commission, where required, prescribe and collect reasonable charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking shall be and always remain self-supporting. The charges prescribed shall produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon, for the payment of which the revenue is pledged, charged, or otherwise encumbered, including reserves; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

SECTION 47A-9-518. LOCAL IMPROVEMENT BONDS. (1) The governing body may, by ordinance, authorize the issue and sale of local improvement bonds to pay all or part of the cost of an improvement in a local

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improvement district as authorized by an improvement plan. The principal and interest of bonds issued shall be payable from the levy of special assessments against the property to be benefitted and other revenues appropriated by the governing body. Proceeds from the special assessments shall be credited to the debt service fund for the payment of principal and interest on the bonds.

(2) Local improvement bonds may not be issued for a term exceeding twenty (20) years, except bonds for water, sewer and storm sewer systems may be issued for a term not to exceed forty (40) years.

(3) (a) Before the governing body may issue local improvement bonds, it shall establish a local improvement revolving fund in order to secure prompt payment of principal and interest on any local improvement bond and appropriate to the account annually, from the general fund, or any other fund, or by the levy of a tax as provided for in 47A-9-403(f), a sum adequate to cover any anticipated deficiency in meeting payments of principal or interest on local improvement bonds by reason of nonpayment of special assessments when due.

(b) Should a local improvement district lack sufficient revenues to meet principal and interest payments due, the governing body, by resolution, may loan to the desired fund a sum sufficient to meet principal and interest payments due from the local improvement district revolving fund at the interest rate that equals that of the outstanding bonds.

(c) Whenever a loan is made to any local improvement district from the revolving fund, the revolving fund shall have a lien on all unpaid special assessments and installments of special assessments of the district and all monies thereafter coming into the district fund to the amount of the loan and interest from the time the loan was made.

(d) Whenever there are monies in a district fund which are not required for bond or interest payments, a portion of the money as may be necessary to pay the loan shall, by resolution, be transferred to the revolving fund.

(e) Monies received from actions taken against property for non-payment of special assessments shall be credited to the local improvement district fund.

(f) Any remaining monies in a local improvement fund after all outstanding bonds and interest are fully paid, shall, by resolution, be transferred to the local improvement district revolving account.

(4) The local government may collect delinquent special assessments in the same manner as delinquent property taxes.

(5) Except for the purpose of funding the local improvement district revolving fund, no holder or holders of any local improvement district bonds shall have the right to compel any exercise of taxing power of a local government to pay the bonds or interest.

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SECTION 47A-9-519. REFUNDING BONDS. (1) If a local government has outstanding general obligation bonds, revenue bonds, or local improvement district bonds, and the governing body determines that it would be financially advantageous to refund the bonds, the governing body may provide, by ordinance, for the issue of general obligation, revenue, or local government improvement district refunding bonds.

(2) The refunding bonds may take up and refund all or any part of the outstanding bonds at or before their maturity or redemption date. The governing body may include various series and issues of bonds in a single issue of refunding bonds, except that revenue, general obligation, and local improvement district bonds may not be combined in a single issue of refunding bonds.

(3) No refunding bonds shall be issued unless the refunding bonds shall bear interest at a rate of at least one-half of one per cent (1/2 of 1%) less than the interest rate of the outstanding bonds to be refunded.

(4) No election is required to authorize the issue and sale of refunding bonds. Their issue may be authorized and all proceedings with reference to them prescribed by ordinance of the governing body. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

(5) General obligation refunding bonds are payable according to section 47A-9-511. Revenue refunding bonds are payable according to section 47A-9-516. Special improvement district refunding bonds are payable according to section 47A-9-518.

(6) General obligation or revenue refunding bonds may, in the discretion of the governing body, be exchanged at par for the bonds being refunded or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the bonds being refunded.

SECTION 47A-9-520. BOND ANTICIPATION BORROWING. (1) A local government may borrow money in anticipation of the sale of general obligation bonds, revenue bonds, and local improvement district bonds if:

(a) the general obligation bonds to be sold have been authorized and ratified at a regular or special election; or

(b) the revenue bonds to be sold have been authorized by ordinance; or

(c) the local improvement district bonds to be sold have been authorized.

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(2) The governing body shall issue negotiable or non-negotiable notes for the amounts borrowed with a maturity date not to exceed one (1) year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

(3) If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the governing body shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one (1) year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three (3) years.

SECTION 47A-9-521. REPAYMENT OF NOTES. (1) Every bond anticipation note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

(2) (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power, and resources of the local government. The local government may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

(c) Notes issued in anticipation of the sale of local improvement district bonds and the interest on them are secured in the same manner as are local improvement district bonds in anticipation of which the notes are issued.

SECTION 47A-9-522. LIMITATION. (1) The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

(2) The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

(3) Notes issued under this chapter shall be sold by the local government in the manner and at the price it determines at either public or private sale, but no note may be sold for less than par and accrued interest.

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SECTION 47A-9-523. CONDITIONS OF SALE AND MISCELLANEOUS PROVISIONS. (1) The governing body shall give notice of the sale of bonds. The notice shall state:

- (a) the type of bond to be sold;
- (b) the purpose or purposes for the bond to be issued;
- (c) the amount of the issue; and

(d) where and when bids for the purchase of the bonds will be accepted.

(2) The governing body shall consider the bids submitted and may reject any and all bids and sell the bonds at a private sale if they consider it to be in the best interest of the local government.

(3) No bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

(4) A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

(5) All bonds and notes shall be payable as stated in the authorization or in the bond or note.

(6) Bonds shall be fully negotiable.

(7) The governing body may, in its discretion, provide that bonds may be issued and sold in two (2) or more series or installments.

(8) If authorized bonds have not been sold and issued within three (3) years from the date of the bonding election and no vested rights have accrued thereunder, the governing body may rescind the authority to sell and issue the bonds by the passage and adoption of a resolution wherein is recited the reason for the rescission of the authority.

(9) All local governments shall include as a condition of sale for any bond or note submission by the bidder of an indemnity bond as provided in section 6-501.

(10) At least fifteen (15) days prior to the date set for sale, notice of the sale shall be mailed to the board of investments.

(11) After the sale, the bonds or notes may not be delivered to the purchaser until payment in full has been received for the bonds or notes.

(12) Subsection (9) and (11) shall not apply to the board of investments as a bidder or purchaser.

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SECTION 47A-9-524. BOND REGISTER. (1) The finance officer shall maintain a register of all bonds. The bond register shall show the number and amount of each bond, the date of issue, date redeemable, the date when the same will become due, the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be made, and the name and address of the purchaser.

(2) All payments on bonds and interest coupons and the date payment shall be entered on the bond register.

(3) All bonds and interest coupons paid shall be canceled.

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SECTION 47A-9-525. LOST BOND OR WARRANTS. (1) The finance administrator is authorized upon satisfactory proof that any original bond, warrant, or coupon has been lost or destroyed to issue to the owner or holder of the bond, warrant, or coupon a duplicate thereof which will take the place in order of registration and payment or the original bond, warrant, or coupon and in all cases supersede and take the place of the original.

(2) Before issuing the duplicate bond, warrant, or coupon, the governing body must require the person demanding the duplicate to execute and deliver to the finance administrator a bond, payable to the county, in double the amount of the bond, warrant, or coupon, with at least two (2) good and sufficient sureties, which must be required to justify, as in the case of attachment, the conditions of the bond being that the principal and sureties therein will indemnify and save harmless the local government from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the duplicate bond, as the lawful holder of the original bond, warrant, or coupon, all monies received upon the duplicate.

(3) The finance administrator, at the time of issuing any duplicate bond, warrant, or coupon, must write across or upon the face thereof the word "duplicate".

(4) The word "duplicate" upon any bond, warrant, or coupon imparts notice to all persons that the duplicate is issued subject to the provisions of this section.

(5) It is the duty of the finance administrator, upon the production to him of any original bond, warrant, or coupon, by the lawful owner or holder thereof, to assign by endorsement and to deliver to him the bond mentioned in this section and the owner or holder may maintain an action in his own name upon the bond for the recovery of any monies paid upon the duplicate, but the delivery of the bond does not relieve or exonerate the local government from the payment of the amount specified therein upon a demand and refusal of the sureties names in the indemnifying bond to pay the same.

SECTION 47A-9-526. VALIDITY OF BONDS. (1) Bonds bearing the signatures of officers in office on the date of signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment any or all the persons whose signatures appear thereon shall have ceased to be officers of the local government issuing the bonds.

(2) The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which the bonds are issued.

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(3) The ordinances authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this title, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

SECTION 47A-9-527. LIABILITY OF MEMBERS OF GOVERNING BODY.

(1) If the governing body shall fail, neglect, or refuse in any year to make a levy or special assessment sufficient to pay the interest on and principal of any issue or series of general obligation or local improvement district bonds, the holder of any bond of the issue or series, or any taxpayer paying taxes or special assessments on property situated in the jurisdiction, may apply to the district court for a writ of mandate to compel the governing body to make a proper and sufficient levy or special assessment for such purposes.

(2) If, upon the hearing of the application, it shall appear to the satisfaction of the court that the governing body has failed, neglected, or refused to make any levy or special assessment whatever for such purposes, or has made a levy or special assessment but that the same is insufficient, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the governing body, at its next meeting for the purpose of making and fixing levies and special assessments, to raise the amount of the deficiency.

(3) The levy or special assessment shall be in addition to the levy or special assessment required to be made for the then current fiscal year.

(4) Any costs which may be allowed or awarded the petitioner shall be paid by the members of the governing body and shall not be a charge against the local government.

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STATE COMMISSION ON LOCAL GOVERNMENT

State Capitol
Helena, MT 59601

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